

10-20-2009

# Martin v. Camas County Ex Rel. Bd. Com'rs Clerk's Record v. 1 Dckt. 36605

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LAW CLERK

Vol 1 of 3

IN THE SUPREME COURT OF THE STATE OF IDAHO

GEORGE MARTIN and MARTIN CUSTOM  
HOMES, LLC,

Plaintiff-Appellants,

V.

CAMAS COUNTY, IDAHO, by  
And through the duly elected Board of  
Commissioners in their official capacity,  
KEN BACKSTROM, BILL DAVIS, and RON  
CHAPMAN,

Defendants-Respondents,

SUPREME COURT NO.36605-2009

CLERKS RECORD ON APPEAL

VOLUME #1

Appeal from the District Court of the 5<sup>th</sup> Judicial District  
of the State of Idaho, in and for the County of Camas

\*\*\*\*\*

HONORABLE ROBERT J. ELGEE, DISTRICT JUDGE

\*\*\*\*\*

CHRISTOPHER SIMMS  
P.O. Box 1861  
Hailey, ID. 83333

Attorney for Appellant

PAUL FITZER  
950 W. Bannock St., Suite 520  
Boise, ID. 83702

Attorney for Respondents



36605

## Attorney for Respondents

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Date: 8/3/2009

F Judicial District Court - Camas County

User: KORRI

Time: 03:30 PM

ROA Report

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Case: CV-2008-0000040 Current Judge: John K Butler

George Martin, etal. vs. Camas County Board of Commissioners, etal.

George Martin, Martin Custom Homes vs. Camas County Board of Commissioners, Ken Backstrom, Bill Davis, Ron Chapman

Date	Code	User	Judge
10/10/2008	APER	KORRI	Defendant: Camas County Board of Commissioners Appearance Paul Fitzer
10/15/2008	NCOC	KORRI	New Case Filed - Other Claims
		KORRI	Filing: U - Fee for opening any other civil case not listed on the schedule Paid by: Martin, George (plaintiff) Receipt number: 0000866 Dated: 10/15/2008 Amount: \$88.00 (Check) For: Martin, George (plaintiff)
	COMP	KORRI	Complaint Filed
	ATRO	KORRI	Plaintiffs verified application for Temporary Restraining Order, Preliminary Injunction & Declaratory Relief
	MISC	KORRI	Statement in Support of Proposed Temporary Restraining Order
	SMIS	KORRI	Summons Issued
	OBJC	BOBBIE	Defendants Camas County, The Individual Members of the Camas County Board Of County Commissioners, and Ed Smith's Objection To Plaintiffs' Application For Temporary Restraining Order And Preliminary Injunction
	APER	KORRI	Plaintiff: Martin, George Appearance Christopher P. Simms
10/16/2008	MOTN	KORRI	Motion for Disqualification
	ANSW	BOBBIE	Answer
	HRSC	KORRI	Hearing Scheduled (Hearing Scheduled 10/22/2008 02:00 PM) Application for TRO
10/20/2008	OBJC	BOBBIE	Defendants Camas County, The Individual Members of the Camas County Board Of Commissioners' Objection To Plaintiffs' Application For Preliminary Injunction
	AFFD	KORRI	Affidavit of Dwight Butlin in support of Defs' objection to Plaintiffs' verified application for a TRO restraining Order, prelim injunction & Declatory relief
10/21/2008	ORDR	KORRI	Order for disqualification
	CHJG	KORRI	Change Assigned Judge
	CONT	KORRI	Hearing result for Hearing Scheduled held on 10/22/2008 02:00 PM: Continued Application for TRO
	HRSC	KORRI	Hearing Scheduled (Hearing Scheduled 10/24/2008 01:00 PM) Application for TRO in Jerome County
10/28/2008	STIP	BOBBIE	Stipulation Of Facts
	STIP	BOBBIE	Stipulation As To Facts And Admission Of Documentary Evidence



Date: 8/3/2009

F Judicial District Court - Camas County

User: KORRI

Time: 03:30 PM

ROA Report

Page 2 of 3

Case: CV-2008-0000040 Current Judge: John K Butler

George Martin, etal. vs. Camas County Board of Commissioners, etal.

George Martin, Martin Custom Homes vs. Camas County Board of Commissioners, Ken Backstrom, Bill Davis, Ron Chapman

Date	Code	User	Judge
10/28/2008	HRHD	BOBBIE	Hearing result for Hearing Scheduled held on 10/24/2008 01:00 PM: Hearing Held Application for TRO in Jerome County
11/10/2008	DEOP	BOBBIE	Decision Or Opinion
2/13/2009	MOSJ	BOBBIE	Motion For Summary Judgment
	MEMO	BOBBIE	Memorandum In Support Of Defendant's Motion For Summary Judgment
	AFFD	BOBBIE	Affidavit Of Dwight Butlin In Support Of Defendants' Motion For Summary Judgment
	AFFD	BOBBIE	Affidavit Of Ken Backstrom In Support Of Defendants' Motion For Summary Judgment
	HRSC	BOBBIE	Hearing Scheduled (Motion for Summary Judgment 03/23/2009 01:30 PM) At The Jerome County Courthouse
2/20/2009	STIP	KORRI	Stipulation of counsel RE: order setting time to respond to motion for S. Jugment & resetting hearing date
	NOTC	KORRI	Notice OF HEARING RESETTNG HEARING ON DEFENDANTS MOTION FOR s jUDGMENT
2/24/2009	CONT	KORRI	Hearing result for Motion for Summary Judgment held on 03/23/2009 01:30 PM: Continued At The Jerome County Courthouse
	HRSC	KORRI	Hearing Scheduled (Motion for Summary Judgment 04/13/2009 01:30 PM)
3/17/2009	NOTC	KORRI	amended notice of hearing: resetting def motion for summary judgment
4/1/2009	AFFD	KORRI	Affidavit of George Martin in opposition to motion for Summary Judgment
	MISC	KORRI	Plaint.statement of material fact & submittal of affidavits & documents i opposition to summary judgment
	OBJC	KORRI	Plint. objection to Affidavits of D.Butlin,K.Backstrom & statement of material facts
	MEMO	KORRI	Plaint.Memorandum response to def's motion for summary judgment
	AFFD	KORRI	Affidavit of Bob Rodman in opposition to motion for Summary Judgment
4/8/2009	MEMO	KORRI	Defendants repy memorandum in support of its motion for Summary Judgement
4/13/2009	HRHD	KORRI	Hearing result for Motion for Summary Judgment held on 04/13/2009 01:30 PM: Hearing Held In Jerome County
4/17/2009	CMIN	BOBBIE	Court Minutes
5/7/2009	ORDR	KORRI	Memorandum Decision & Order Re;Def Motion for Summary Judgment
	MOSJ	KORRI	Motion For Summary Judgment granted

Date: 8/3/2009

F Judicial District Court - Camas County

User: KORRI

Time: 03:30 PM

ROA Report

Page 3 of 3

Case: CV-2008-0000040 Current Judge: John K Butler

George Martin, etal. vs. Camas County Board of Commissioners, etal.

George Martin, Martin Custom Homes vs. Camas County Board of Commissioners, Ken Backstrom, Bill Davis, Ron Chapman

Date	Code	User	Judge
5/7/2009	DSWP	KORRI	Dismissed With Prejudice
	STAT	KORRI	STATUS CHANGED: closed
5/20/2009	MOTN	BOBBIE	Defendant's Motion For Attorney Fees And Cost
	MCAF	BOBBIE	Defendants Camas County's Memorandum Costs And Attorney Fees
	AFFD	BOBBIE	Affidavit Of Paul J. Fitzer In Support Of Motion For Attorney Fees And Costs
		KORRI	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Camas courier Receipt number: 0001614 Dated: 5/20/2009 Amount: \$24.00 (Check)
5/28/2009	OBJC	KORRI	Plaintiffs objection to defendants motion for attorney fees and costs
6/1/2009	HRSC	KORRI	Hearing Scheduled (Motion for Attorney fees and Costs 07/13/2009 02:00 PM) In Jerome, Paul fitzer will call in to the Court at 644-2682.
6/3/2009	RESP	KORRI	Response to plaintiffs objection to defendants motion for Attorney fees and costs
6/15/2009		BOBBIE	Filing: T - Civil Appeals To The Supreme Court (\$86.00 for the Supreme Court to be receipted via Misc. Payments. The \$15.00 County District Court fee to be inserted here.) Paid by: Simms, Christopher P. (attorney for Martin, George) Receipt number: 0001719 Dated: 6/15/2009 Amount: \$15.00 (Check) For: Martin Custom Homes, (plaintiff)
	NOTA	BOBBIE	NOTICE OF APPEAL
6/25/2009	REQT	BOBBIE	Defendants Camas County, The Individual Members of The Camas County Board of County Commissioners, And Ed Smith's Request to Supplement Clerk's Record on Appeal
7/13/2009	HRHD	KORRI	Hearing result for Motion for Attorney fees and Costs held on 07/13/2009 02:00 PM: Hearing Held In Jerome, Paul fitzer will call in to the Court at 644-2682.
7/21/2009	ORDR	KORRI	Order denying defendants motion for award of attorney fees

CHRISTOPHER P. SIMMS  
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ISB# 7473

FILED  
10-15-08  
HR 10:20 A.M.  
ROLLIE BENNETT  
CLERK OF THE DISTRICT COURT  
*Rollie Bennett*

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN, )  
)  
Plaintiff, )  
)  
and )  
)  
MARTIN CUSTOM )  
HOMES, L.L.C., )  
)  
Plaintiff, )  
v. )  
)  
)  
CAMAS COUNTY, IDAHO, )  
By and through the duly elected )  
Board of Commissioners in )  
their official capacities, )  
)  
)  
KEN BAXTROM, )  
BILL DAVIS, and )  
RON CHAPMAN, )  
)  
Defendants. )  
\_\_\_\_\_ )

Case No. CU-2008-40

COMPLAINT FOR  
DECLARATORY JUDGEMENT

FEE CATEGORY: U \$88.00

COMES NOW, Plaintiff George Martin, personally and on behalf of Martin Custom Homes, L.L.C. as a member, and in support of his Complaint for Declaratory Judgment against Camas County, by and through its duly elected Board of Commissioners, does state following:

1. George Martin (hereinafter referred to as "Plaintiff" jointly with Martin Custom Homes, L.L.C.) is a resident of and owner of real property situated in the County of Camas, State of Idaho.

2. Martin Custom Homes, L.L.C (hereinafter referred to as "Plaintiff" jointly with George Martin) is an Idaho Limited Liability Company in good standing.

3. George Martin and Martin Custom Homes, L.L.C., are actively engaged in the purchase, sale and development of real property in Camas County Idaho, and as such hold certain beneficial contractual interests in and relating to real property situated in Camas County, State of Idaho.

4. All acts and activities alleged to have occurred in this Complaint occurred within County of Camas, State of Idaho.

5. The relief requested herein by Plaintiff is within the jurisdiction of the District Court for the State of Idaho, County of Camas.

6. Beginning in the fall of 2005, Camas County, by and through its duly elected Board of Commissioners, and Planning and Zoning Commission, undertook to exercise the mandatory powers authorized Title 67 Chapter 65, commonly referred to as the Local Land Use Planning Act, by amending the Camas County Comprehensive Plan, the Land Use Map and Zoning Ordinance, text and Zoning Map, and did thereby uniformly and systematically up-zone real property owned by various members, relations

and clients of members of the Board and Commission, and downzone real property owned by Plaintiff.

7. Under Cause number CV-07-24 Plaintiffs sued Defendants seeking a Declaratory Judgment relating to Comprehensive Plans adopted on May 25, 2006 as Resolution 96 and amended March 29, 2007 and Zoning Ordinance adopted on April 18, 2007, as Ordinance #153 and the Zoning Designation Map adopted March 29, 2007 as Ordinance #150.

8. The basis of challenge against the 2006-2007 Comprehensive Plan, Land Use Map, Zoning Ordinance and Zoning Designation Map included various procedural and substantive failures to comply with LLUPA and due process of law, including, but not limited to; failure to maintain a reviewable record, legal notice of Public Hearing violations, Conflicts of Interest, and failure to comply with the substantive dictates of LLUPA.

9. This Court entered Preliminary Injunctions against Defendant Camas County based upon failure to maintain a reviewable record, December 28, 2007 and due to conflicts of interest, April 2, 2008. The Preliminary Injunction orders prohibit Defendant, Camas County, from proceeding under the Zoning Ordinance amended in March of 2007 and the related Zoning Map if the Zoning Map purportedly affected any sort of change in existing zoning.

10. The matter was tried to the Court concluding on August 19, 2008 and has been taken under submission, while the Preliminary Injunctions remain in force.

11. In reaction to the above referenced Court Orders, Defendant, Camas County on or about May 12, 2008, by Resolutions 114 and 115, illegally adopted a new Amended Comprehensive Plan and Land Use Map. On that same date, by Ordinance Nos.

157 and 159 the Camas County Board of Commissioners, adopted a new amended Zoning Ordinance and Zoning Designation Map.

12. The above referenced Comprehensive Plan, Land Use Map, Zoning Ordinance and Zoning Designation Map are substantially identical to the Comprehensive Plan, Land Use Map and Zoning Designation Maps that have been enjoined by this Court.

13. The above referenced Comprehensive Plan, Land Use Map, Zoning Ordinance and Zoning Designation Map were adopted by Defendant, Camas County, in an abbreviated process whereby the entire “deliberative process” by the Planning and Zoning Commission and Board of Commissioners occurred in mere minutes without any actual analysis of the substantive dictates of LLUPA, nor was the taint of conflict of interest in anyway removed.

14. Members of the Planning and Zoning Commission and Board of County Commissioners had an economic interest in the outcome of this process under Idaho Code Section 67-6506 and despite recusing themselves, because the outcome was predetermined and the substance of the Comprehensive Plan, Zoning Ordinance and related maps were substantially the same as those previously enjoined, are illegal as the result of a process tainted by fatal conflict of interest.

15. The draft date of the new amended Camas County Comprehensive Plan and Zoning Ordinance is March 10, 2008 before any meeting had been held, indicating unnoticed and illegal meetings of the Board of Commissioners.

16. The draft date of the new amended Camas County Comprehensive Plan and Zoning Ordinance Land Use Map and Zoning Map is March 14 2008 before any

meeting had been held, indicating unnoticed and illegal meetings of the Board of Commissioners.

17. Among the procedural errors associated with the new process are; a) Legal Notice of Public Hearing deficiencies in violation of I.C. Sections 67-6509 & 67-6511 because no summary of the proposed amendments, that would reasonably apprise an individual of the nature or location of the proposed land use zoning changes, was included in said Legal Notice; b) notice was not provided to all political subdivisions providing services within the planning jurisdiction, specifically City of Fairfield, and West Magic Fire District; c) deficiencies under I.C. Section 67-6511 and Camas County No. 142 in providing additional or alternative notice in the case of zoning district boundary change in that notice was not posted as required at the Camas County Courthouse or Fairfield City Hall; d) deficiencies in the recommendations made by the Planning and Zoning Commission to the Board of County Commissioner regarding the new amended Comprehensive Plan, Zoning Ordinance and related Land Use Map and Zoning Designation Map in violation of I.C. Sections 67-6507, 67-6509 (a) & (b), 67-6511 (b), and in the findings issued by the Board of Commissioners; e) publication deficiencies under I.C. Section 31-715A due to failure to publish the entire text, including legal description of the rezoned land, or alternatively a summary that actually describes the amendments made; and f) failure to remedy the stench of pre-existing conflicts of interest as found by this court.

18. Idaho Code Sections 67-6502 provides the twelve (12) purposes for the Local Land Use Planning Act, including; (a) To protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks, (b) To ensure that adequate public facilities and services are provided

to the people at reasonable cost, (c) To ensure that the economy of the state and localities is protected, (d) To ensure that the important environmental features of the state and localities are protected, (e) To encourage the protection of prime agricultural, forestry, and mining lands for production of food, fibre, and minerals, (f) To encourage urban and urban-type development within incorporated cities, (g) To avoid undue concentration of population and overcrowding of land, (h) To ensure that the development on land is commensurate with the physical characteristics of the land, (i) To protect life and property in areas subject to natural hazards and disasters, (j) To protect fish, wildlife, and recreation resources, (k) To avoid undue water and air pollution, (l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis.

19. The legislature to ensure the purposes of the Act are met provides for the mandatory duties, process, procedure and required criteria to be considered in I.C. Sections 67-6507, 67-6508, 67-6528, 67-6535 and 67-6537. For example, I.C. Section 67-6528 states in relevant part, "...In adoption and implementation of the plan and ordinances, the governing board or commission shall take into account the plans and needs of the state of Idaho and all agencies, boards, departments, institutions, and local special purpose districts..." No such accounting of said plans or needs was had in this case or appears in the record of same.

20. Likewise, I.C. Section 67-6511 (a) provides in relevant part, "...Requests for an amendment to the zoning ordinance shall be submitted to the zoning or planning and zoning commission which shall evaluate the request to determine the extent and nature of the amendment requested. Particular consideration shall be given to the effects



of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction..." No such evaluation of the extent and nature of the amendment has here occurred, or appears in the record of same.

21. Similarly, I.C. Section 67-6511 (b) allows a Planning and Zoning commission to make a recommendation to amend a Zoning Ordinance only "After considering the comprehensive plan and other evidence gathered through the public hearing process..." No such consideration was made or appears anywhere in the record of this new process.

22. Idaho Code Section 67-6537 (4), states "When considering amending, repealing or adopting a comprehensive plan, the local governing board shall consider the effect the proposed amendment, repeal or adoption of the comprehensive plan would have on the source, quantity and quality of ground water in the area." Nothing in the record hereof indicates that any such consideration of ground water issues was had by the Camas County Board of Commissioners.

23. Finally, the legislature, to be certain the purposes of LLUPA were adhered to, adopted 67-6535, requiring approvals of land use ordinances affecting a change in zoning district boundary, like that which has occurred here, to base the decision upon standards in writing. In full the statute provides,

(a) The approval or denial of any application provided for in this chapter shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county.

(b) The approval or denial of any application provided for in this chapter shall be in writing and accompanied by a reasoned statement that

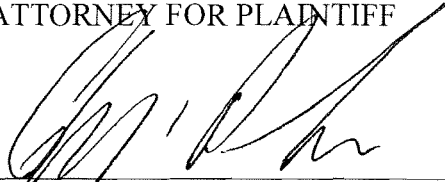
explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

(c) It is the intent of the legislature that decisions made pursuant to this chapter should be founded upon sound reason and practical application of recognized principles of law. In reviewing such decisions, the courts of the state are directed to consider the proceedings as a whole and to evaluate the adequacy of procedures and resultant decisions in light of practical considerations with an emphasis on fundamental fairness and the essentials of reasoned decision-making. Only those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision. Every final decision rendered concerning a site-specific land use request shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code.

None of this occurred in the initial or new amendment process. Therefore, the new amended Comprehensive Plan, Zoning Ordinance and related Land Use Map and Zoning Designation Maps are void on the face of the record before the Court

WHEREFORE, Plaintiff prays this Court enter its Order temporarily restraining and preliminarily enjoining Defendant from processing any land use applications under the Zoning Ordinance and Comprehensive Plan illegally adopted on or about May 12, 2008, including but not necessarily limited to subdivision applications and rezone applications as to any lands purportedly affected by a change of land use designation thereby; an Order declaring said Zoning Ordinance, Zoning Map, Comprehensive Plan and Land Use Map null and void; an order directing Defendant to comply with the dictates of LLUPA for any amendments to its Comprehensive Plan or Zoning Ordinance; and an award to Plaintiff for his Attorney Fees and costs herein expended.

CHRISTOPHER P. SIMMS  
ATTORNEY FOR PLAINTIFF

  
\_\_\_\_\_  
Christopher P. Simms

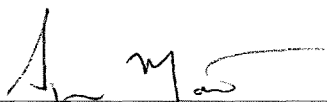
VERIFICATION

State of Idaho       )  
                              )  
County of Camas     )

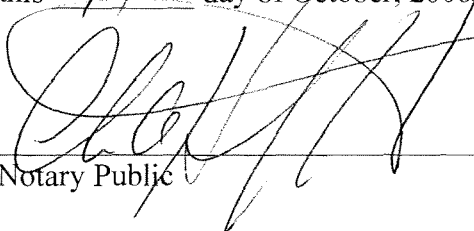
I GEORGE MARTIN, the Petitioner herein, declare under oath that the above is true to the best of my knowledge.

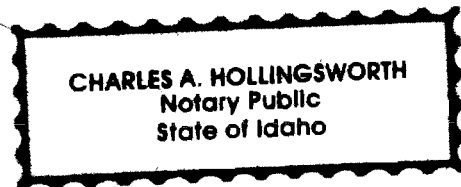
Dated this 14 day of October, 2008.

Petitioner

  
\_\_\_\_\_  
GEORGE MARTIN

Subscribed and sworn to before me by GEORGE MARTIN, a person to me known, this 14 day of October, 2008.

  
\_\_\_\_\_  
Notary Public



SEAL

My commission expires: 06/22/2013

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Fax: 208 622 7129  
ISB# 7473

Attorney for Plaintiff

FILED  
10-15-08  
HR 10:20 A.M.  
ROLLIE BENNETT  
CLERK OF THE DISTRICT COURT  
*Rollie Bennett*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN, )  
)  
Plaintiff, )  
)  
and )  
)  
MARTIN CUSTOM )  
HOMES, L.L.C., )  
)  
Plaintiff, )  
v. )  
)  
)  
)  
CAMAS COUNTY, IDAHO, )  
By and through the duly elected )  
Board of Commissioners in )  
their official capacities, )  
)  
KEN BAXTROM, )  
BILL DAVIS, and )  
RON CHAPMAN, )  
)  
Defendants. )  
\_\_\_\_\_ )

Case No. CU-2008-40

PLAINTIFF'S VERIFIED APPLICATION  
FOR TEMPORARY RESTRAINING  
ORDER, PRELIMINARY INJUNCTION  
AND DECLARATORY RELIEF

COMES NOW, Plaintiff and files this, his Verified Application for Temporary Restraining Order, Preliminary Injunction and Declaratory Relief and in support thereof states as follows;

1. On or about May 12, 2008, by Resolutions 114 and 115 adopted a new Amended Comprehensive Plan and Land Use Map. On that same date, by Ordinance Nos. 157 and 159 the Camas County Board of Commissioners adopted a new amended Zoning Ordinance and Zoning Designation Map.
2. In the instant case the Defendant's were repeatedly advised to follow the process as provided under LLUPA, in both the amendment process beginning in 2005, which has now been the subject of more than one (1) year of litigation, and again during the process beginning in March of 2008. Defendants were repeatedly invited to begin the initial amendment process anew, following the lawfully provided procedural and substantive process, but declined to do so.
3. On the eve of trial in Case No. 07-24 Defendants, in violation of LLUPA adopted alterative ordinances, as specifically described above, and continue to process land use applications thereunder.
4. Idaho Rule of Civil procedure Rule 65(e). Grounds for preliminary injunction, provides in pertinent part,

A preliminary injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.

(3) When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

5. Idaho Code Section 67-6527 dealing with violations of LLUPA also provides for immediate injunctive relief. The statute reads in pertinent part,

Upon a showing that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or ordinance or regulation enacted hereunder, a permanent or temporary injunction, restraining order, or such other relief as the court deems appropriate shall be granted. The governing board shall not be required to furnish bond.

6. In the instant case Plaintiff has previously shown he would be irreparably harmed if Defendant Camas County is permitted to proceed with the processing of land use application under illegally adopted amended zoning ordinances that have adversely affected real property in which he holds an interest, as to lands that have been affected by said amended zoning. Plaintiff relies heavily upon paragraph numbered (3) of Rule 65(e).

7. Attached hereto and made a part hereof are the following Exhibits;

- Exhibit A – Published Notice of Planning and Zoning Commission Hearing on Zoning Ordinance and Comprehensive Plan, Camas Courier April 2, 2008, for hearing on April 21, 2008.
- Exhibit B – Published Notice of Board of County Commissioners Hearing on Zoning Ordinance and Comprehensive Plan, Camas Courier April 23, 2008, for hearing on May 12, 2008.

- Exhibit C Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Zoning Map.
- Exhibit D Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Zoning Ordinance
- Exhibit E Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Comprehensive Plan Map.
- Exhibit F Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Comprehensive Plan.
- Exhibit G – Publication of adoption on May 12, 2008 of Zoning Ordinance No. 157, and Zoning Map Ordinance No. 158 Board of County Commissioners Hearing published in the Camas Courier on May 14, 2008.

DEFENDANT'S ACTIONS IN ADOPTING NEW AMENDED ORDINANCES IS IN  
VIOLATION OF THE COURT'S PRELIMINARY INJUNCTIONS

8. This Court, in its order of December 28, 2007, without striking the ordinance as wholly void, enjoined and prohibited Defendant from proceeding under the Zoning Ordinance amended in March of 2007 and the related Zoning Map if the Zoning Map purportedly affected any sort of change in existing zoning. Again, in this Court's Order of

March 10, 2008 the Court stated, on page three (3) “until such time as a final Order is entered the County cannot treat the March 2007 Zoning Amendments as void...”

9. The Court stated, “In the Court’s view the applicable zoning in Camas County governing land use applications cannot change week to week, as the case at hand progresses. At such time as a *final* order is entered the question of which County Zoning Ordinance applies will have been settled, and not before.”

10. The only means to amend the Zoning Ordinance is the procedure provided for in the Zoning Ordinance, Article XVII, and in full compliance with LLUPA. The Defendant’s actions in amending the Zoning Ordinance, again altering the Zoning Designation in areas purportedly affected by zoning change by the 2007 amendments, are in violation of the Court’s Order.

PROCESS OF ADOPTING NEW AMENDED COMPREHENSIVE PLAN & ZONING  
ORDINANCE IN VIOLATION OF LLUPA

11. The new amended Comprehensive Plan and Zoning Ordinance Land Use Map and Zoning Map are substantially identical to that approved in May 2006, March and April 2007, with several minor exceptions.

12. The draft date of the new amended Camas County Comprehensive Plan and Zoning Ordinance is March 10, 2008 before any meeting had been held, indicating unnoticed and illegal meetings of the Board of Commissioners.

13. The draft date of the new amended Camas County Comprehensive Plan and Zoning Ordinance Land Use Map and Zoning Map is March 14 2008 before any meeting had been held, indicating unnoticed and illegal meetings of the Board of Commissioners.



14. Among the procedural errors associated with the new process are; a) Legal Notice of Public Hearing deficiencies in violation of I.C. Sections 67-6509 & 67-6511 because no summary of the proposed amendments, that would reasonably apprise an individual of the nature or location of the proposed land use zoning changes, was included in said Legal Notice; b) nor was said notice provided to all political subdivisions providing services within the planning jurisdiction, specifically City of Fairfield, and West Magic Fire District; c) deficiencies under I.C. Section 67-6511 and Camas County No. 142 in providing additional or alternative notice in the case of zoning district boundary change in that notice was not posted as required at the Camas County Courthouse or Fairfield City Hall; d) deficiencies in the recommendations made by the Planning and Zoning Commission to the Board of County Commissioner regarding the new amended Comprehensive Plan, Zoning Ordinance and related Land Use Map and Zoning Designation Map in violation of I.C. Sections 67-6507, 67-6509 (a) & (b), 67-6511 (b), and in the findings issued by the Board of Commissioners; e) publication deficiencies under I.C. Section 31-715A due to failure to publish the entire text, including legal description of the rezoned land, or alternatively a summary that actually describes the amendments made; and f) failure to remedy the stench of pre-existing conflicts of interest as found by this court.

15. Idaho Code Sections 67-6502 provides the twelve (12) purposes for the Local Land Use Planning Act, including; (a) To protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks, (b) To ensure that adequate public facilities and services are provided to the people at reasonable cost, (c) To ensure that the economy of the state and localities is protected, (d) To ensure that the important environmental features of the state and

localities are protected, (e) To encourage the protection of prime agricultural, forestry, and mining lands for production of food, fibre, and minerals, (f) To encourage urban and urban-type development within incorporated cities, (g) To avoid undue concentration of population and overcrowding of land, (h) To ensure that the development on land is commensurate with the physical characteristics of the land, (i) To protect life and property in areas subject to natural hazards and disasters, (j) To protect fish, wildlife, and recreation resources, (k) To avoid undue water and air pollution, (l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis.

16. The legislature to ensure the purposes of the Act are met provides for the mandatory duties, process, procedure and required criteria to be considered in I.C. Sections 67-6507, 67-6508, 67-6528, 67-6535 and 67-6537. For example, I.C. Section 67-6528 states in relevant part, "...In adoption and implementation of the plan and ordinances, the governing board or commission shall take into account the plans and needs of the state of Idaho and all agencies, boards, departments, institutions, and local special purpose districts..." No such accounting of said plans or needs was had in this case or appears in the record of same.

17. Likewise, I.C. Section 67-6511 (a) provides in relevant part, "...Requests for an amendment to the zoning ordinance shall be submitted to the zoning or planning and zoning commission which shall evaluate the request to determine the extent and nature of the amendment requested. Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction..."

No such evaluation of the extent and nature of the amendment has here occurred, or appears in the record of same.

18. Similarly, I.C. Section 67-6511 (b) allows a Planning and Zoning commission to make a recommendation to amend a Zoning Ordinance only "After considering the comprehensive plan and other evidence gathered through the public hearing process..."

No such consideration was made or appears anywhere in the record of this new process.

19. Idaho Code Section 67-6537 (4), states "When considering amending, repealing or adopting a comprehensive plan, the local governing board shall consider the effect the proposed amendment, repeal or adoption of the comprehensive plan would have on the source, quantity and quality of ground water in the area." Nothing in the record hereof indicates that any such consideration of ground water issues was had by the Camas County Board of Commissioners.

20. Finally, the legislature, to be certain the purposes of LLUPA were adhered to, adopted 67-6535, requiring approvals of land use ordinances affecting a change in zoning district boundary, like that which has occurred here, to base the decision upon standards in writing. In full the statute provides,

(a) The approval or denial of any application provided for in this chapter shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county.

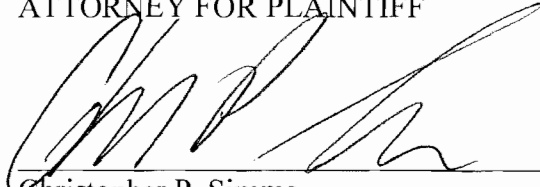
(b) The approval or denial of any application provided for in this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

(c) It is the intent of the legislature that decisions made pursuant to this chapter should be founded upon sound reason and practical application of recognized principles of law. In reviewing such decisions, the courts of the state are directed to consider the proceedings as a whole and to evaluate the adequacy of procedures and resultant decisions in light of practical considerations with an emphasis on fundamental fairness and the essentials of reasoned decision-making. Only those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision. Every final decision rendered concerning a site-specific land use request shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code.

None of this occurred in the initial or new amendment process. Therefore, the new amended Comprehensive Plan, Zoning Ordinance and related Land Use Map and Zoning Designation Maps are void on the face of the record before the Court. No analysis of whether or not the previously adopted flawed Plan, Zoning Ordinance or Maps, are void is necessary. The Court should proceed to restrain and enjoin the new amendments, and move through trial on the merits of all the amendments.

WHEREFORE, Plaintiff prays this Court enter its Order temporarily restraining Defendant from processing any land use applications under the Zoning Ordinance and Comprehensive Plan illegally adopted on or about May 12, 2008, including but not necessarily limited to subdivision applications and rezone applications as to any lands purportedly affected by a change of land use designation thereby.

CHRISTOPHER P. SIMMS  
ATTORNEY FOR PLAINTIFF

  
\_\_\_\_\_  
Christopher P. Simms

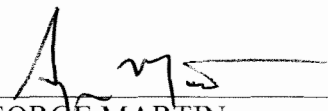
VERIFICATION

State of Idaho       )  
                              )  
County of Camas     )

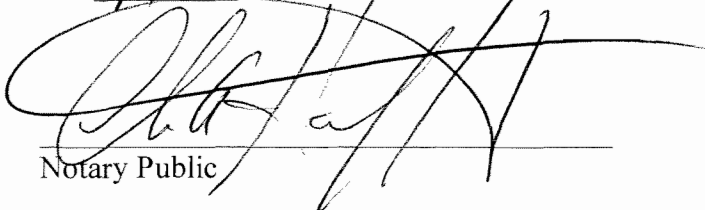
I GEORGE MARTIN, the Petitioner herein, declare under oath that the above is true to the best of my knowledge.

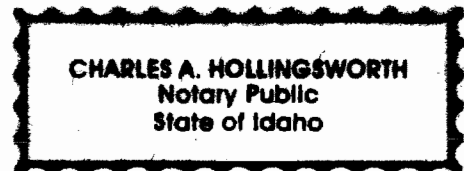
Dated this 14 day of October, 2008.

Petitioner

  
\_\_\_\_\_  
GEORGE MARTIN

Subscribed and sworn to before me by GEORGE MARTIN, a person to me known, this 14 day of October, 2008.

  
\_\_\_\_\_  
Notary Public

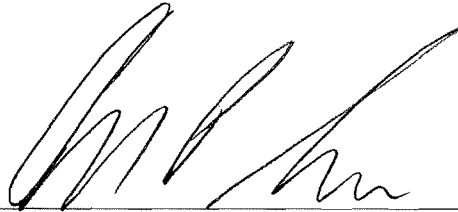


SEAL

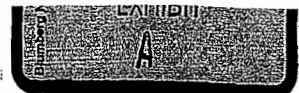
My commission expires: 06/22/2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15 day of OCTOBER, 2008, a copy of PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND DECLARATORY RELIEF – MAY 12, 2008 COMPREHENSIVE PLAN, LAND USE MAP, ZONING ORDINANCE AND ZONING DESIGNATION MAP was served upon counsel via facsimile and addressed to Paul Fitzer, Attorney for Camas County Defendants 950 W. Bannock St., Ste 520, Boise, Idaho 83702, facsimile number 208 331 1202.



\_\_\_\_\_  
Christopher P. Simms



## Legal Advertisements Legal Advertisements Legal Advertisements

### NOTICE OF PUBLIC HEARING FOR CAMAS COUNTY ZONING ORDINANCE AND COMPREHENSIVE PLAN

NOTICE IS HEREBY GIVEN: on Monday, the 21<sup>st</sup> day of April, 2008 at 5:00 p.m. or as soon thereafter as the matter may be heard, the Planning and Zoning Commission of Camas County will hold a public hearing at the Senior Citizen's Center, 127 West Willow, Fairfield, Idaho, to consider the draft of a new zoning ordinance and new comprehensive plan, in accordance with Section 67-6509 and 67-6511, Idaho Code. The purpose of this hearing is for the public as well as the Planning and Zoning Commission to consider drafts of a new zoning ordinance and a new comprehensive plan for Camas County and make recommendations concerning the drafts to the County Commissioners. Copies of the draft documents are available at the Camas County Planning and Zoning Office.

A general summary of the provisions of the zoning ordinance is as follows:

Article I	Title, Interpretation, and Enactment
Article II	Definitions
Article III	Administration
Article IV	Establishment and Purpose of Districts
Article V	Provisions for Official Zoning Map
Article VI	District Regulations
Article VII	Official Schedule of District Regulations
Article VIII	Official Height and Area Regulations
Article IX	Flood Plain Overlay Districts
Article X	Performance Standards
Article XI	Hillside and Foothill Areas Development
Article XII	Conditional Use Permits
Article XIII	Procedures for Planned Unit Developments
Article XIV	Non-Conforming Uses
Article XV	Appeal and Variance
Article XVI	Building Permits
Article XVII	Amendment
Maps	

A general summary of the provisions of the comprehensive plan is as follows:

Section I	Introduction
Section II	Population Analysis
Section III	Private Property Rights
Section IV	Schools and Transportation
Section V	Economic Development
Section VI	Land Use
Section VII	Agriculture
Section VIII	Natural Resources
Section IX	Hazardous Areas
Section X	Transportation
Section XI	Housing
Section XII	Recreation
Section XIII	Community Design
Section XIV	Special Areas or Sites
Section XV	Public Services, Facilities and Utilities
Section XVI	Implementation

Written comments will be received by the Planning & Zoning Administrator until 5:00 p.m. on April 17, 2008. Testimony at the hearing

may be limited to three minutes.

Services for persons with disabilities may be made available by calling the Planning & Zoning Administrator at 764-2046 three days in advance of the hearing.

*Camas County Planning and Zoning Administrator*

### NOTICE OF PUBLIC HEARINGS FOR CAMAS COUNTY COMPREHENSIVE PLAN MAP AND ZONING MAP

NOTICE IS HEREBY GIVEN: on Monday, the 21<sup>st</sup> day of April, 2008 at 5:00 p.m. or as soon thereafter as the matter may be heard, the Planning and Zoning Commission of Camas County will hold public hearings at the Senior Citizen's Center, 127 West Willow, Fairfield, Idaho, to consider drafts of a new comprehensive plan map and a new zoning map for the County of Camas, in accordance with Section 67-6509 and 67-6511, Idaho Code. The purpose of these hearings is for the public as well as the Planning and Zoning Commission to consider drafts of a new zoning map and comprehensive plan map and make recommendations concerning the drafts to the County Commissioners. Copies of the draft maps are available at the Camas County Planning and Zoning Office. A copy of the draft maps are attached to this notice.

Written comments will be received by the Planning & Zoning Administrator until 5:00 p.m. on April 17, 2008. Testimony at the hearing may be limited to three minutes.

Services for persons with disabilities may be made available by calling the Planning & Zoning Administrator at 764-2046 three days in advance of the hearing.

*Camas County Planning & Zoning Administrator*

### NOTICE OF OPENING

The Planning and Zoning Commission has an opening for a Planning and Zoning Commissioner. Applications are available at the Planning and Zoning Office at Courthouse Annex 517 Soldier Rd., Fairfield, ID 83327 or at the County Court House Monday through Friday from 8:30 AM until 5:00 PM.

Please contact Dwight Butlin or Megan Supernaugh at the Planning and Zoning office at 208-764-2046. EEOE.

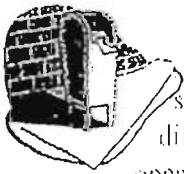
### Notice For Bids

The Camas County Cemetery Board will be accepting bids for maintenance on the four cemeteries until April 2nd, 2008. Persons wishing to bid need to have their own equipment to be able to mow, trim, spray, and do general upkeep in a timely manner as directed by the board. Maintenance will be done from May 2008 through October 2008.

Bids may be given to Linda Miller (Chairman) Route 1 Box 1130, Fairfield, Idaho 83327, phone 764-2560, or Linda Thomas (board member) P.O. Box 508, Fairfield, Idaho 83327, phone 764-2100.

Plaintiffs App. for TRO

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## ...Letters continued

select few. I say this does not have to be that difficult, yes, time and effort and most important, open and honest government working with the community to seek solutions. So lets look ahead to the future, thinking of how it will be and work to make it happen. I see it this way and as a County Commissioner this is the direction I will go.

Sincerely

Dave Konrad

FHS  Family Health Services

401 Camas Avenue West

**764-2611**

**Medical & Dental Care**

*Sliding Scale fees available*

**OPEN:**

Mon. 2 to 7

Wed. 8:30 to 5

Thur. 2 to 7

Fri. 8:30 to 5

## Legal Advertisements Legal Advertisements Legal Advertisements

### NOTICE OF PUBLIC HEARING FOR CAMAS COUNTY ZONING ORDINANCE AND COMPREHENSIVE PLAN

NOTICE IS HEREBY GIVEN: on Monday, the 12th day of May, 2008 at 9:30 a.m. or as soon thereafter as the matter may be heard, the Camas County Board of Commissioners will hold a public hearing at the Senior Citizen's Center, 127 West Willow, Fairfield, Idaho, to consider a new zoning ordinance and new comprehensive plan, in accordance with Section 67-6509 and 67-6511, Idaho Code. The purpose of this hearing is for the public and the Board of Commissioners to consider the enactment of a new Zoning Ordinance and a new Comprehensive Plan to be adopted by Resolution for Camas County repealing all predecessor zoning ordinances and comprehensive plans. The recommendation of the Planning and Zoning Commission is to adopt the Zoning ordinance and the Comprehensive Plan as presented to the Board of Commissioners. Copies of the draft documents are available at the Camas County Planning and Zoning Office.

A general summary of the provisions of the zoning ordinance is as follows:

Article I	Title, Interpretation, and Enactment
Article II	Definitions
Article III	Administration
Article IV	Establishment and Purpose of Districts
Article V	Provisions for Official Zoning Map
Article VI	District Regulations
Article VII	Official Schedule of District Regulations
Article VIII	Official Height and Area Regulations
Article IX	Flood Plain Overlay Districts
Article X	Performance Standards
Article XI	Hillside and Foothill Areas Development
Article XII	Conditional Use Permits
Article XIII	Procedures for Planned Unit Developments
Article XIV	Non-Conforming Uses
Article XV	Appeal and Variance
Article XVI	Building Permits
Article XVII	Amendment
Maps	

A general summary of the provisions of the comprehensive plan is as follows:

Section I	Introduction
Section II	Population Analysis
Section III	Private Property Rights
Section IV	Schools and Transportation
Section V	Economic Development
Section VI	Land Use
Section VII	Agriculture

Section VIII	Natural Resources
Section IX	Hazardous Areas
Section X	Transportation
Section XI	Housing
Section XII	Recreation
Section XIII	Community Design
Section XIV	Special Areas or Sites
Section XV	Public Services, Facilities and Utilities
Section XVI	Implementation

Written comments will be received by the Planning & Zoning Administrator until 5:00 p.m. on May 7, 2008. Testimony at the hearing may be limited to three minutes.

Services for persons with disabilities may be made available by calling the Planning & Zoning Administrator at 764-2046 three days in advance of the hearing.

*Camas County Planning and Zoning Administrator*

### NOTICE OF PUBLIC HEARINGS FOR CAMAS COUNTY COMPREHENSIVE PLAN MAP AND ZONING MAP

NOTICE IS HEREBY GIVEN: on Monday, the 12th day of May, 2008 at 9:30 a.m. or as soon thereafter as the matter may be heard, the Camas County Board of Commissioners will hold public hearings at the Senior Citizen's Center, 127 West Willow, Fairfield, Idaho, to consider drafts of a new comprehensive plan map and a new zoning map for the County of Camas, in accordance with Section 67-6509 and 67-6511, Idaho Code. The purpose of these hearings is for the public as well as the Board of Commissioners to consider drafts of a new zoning map and comprehensive plan map and to enact an ordinance and resolution adopting said Zoning Map and Comp Plan Map. The Planning and Zoning Commission has recommended approval of the maps as presented to the Board of Commissioners. Copies of the draft maps are available at the Camas County Planning and Zoning Office. A copy of the draft maps are attached to this notice.

Written comments will be received by the Planning & Zoning Administrator until 5:00 p.m. on May 7, 2008. Testimony at the hearing may be limited to three minutes.

Services for persons with disabilities may be made available by calling the Planning & Zoning Administrator at 764-2046 three days in advance of the hearing.

*Camas County Planning & Zoning Administrator*

Plaintiffs App. for TRO

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Finding of Facts and Conclusions of Law  
Camas County Planning and Zoning Commission

April 22, 2008

RE. Camas County Zoning Map  
Hearing date: April 21, 2008

FINDING OF FACTS

1. Notice of Public Hearing:
  - a. Published Notice: Camas Courier, 4/2/08, 4/9/08, 4/16/08
  - b. Letters to Agencies: 3/14/08
2. The administrator presented the proposed zoning map to the P & Z commission.
3. The map has been revised to reflect the proposed zoning in Camas County.
4. The proposed map is in accordance with the Comprehensive Plan and associated Land Use map.
5. The proposed map was prepared by Alpine Enterprises, Inc. at the direction of the planning and zoning department.
6. The proposed map, along with a copy of the proposed comprehensive plan and proposed zoning ordinance were mailed to the following political subdivisions.
  - a. Camas county weed management.
  - b. Camas Soil Conservation District
  - c. Camas County Road and Bridge.
  - d. Idaho department of fish and game.
  - e. Camas County Sheriff.
  - f. Camas County School District
  - g. Frontier Telephone
  - h. Camas County fire Marshal
  - i. Idaho Power
  - j. Frosgren Associates, Inc.
  - k. South Central Health Department
  - l. Camas County Engineer at Galena Engineers.
7. Responses have been received from Camas County Road and Bridge, South Central District Health, Camas County Soil Conservation District, & Camas Creek Weed Management Cooperative.
8. Notices were posted at all county lines and all other required locations.

Plaintiffs App for TRO

9. The zoning map was amended to address spatial anomalies rezoning such areas to be designated as a conforming zone.
10. P&Z held a public hearing on April 21, 2008.
11. Notice was published in the Camas Courier as required by State Statue 67-6509.

#### CONCLUSIONS OF LAW

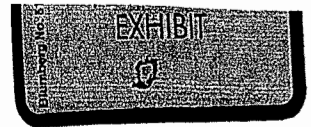
1. All requirements for providing notice of the public hearing as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.
2. All requirements for the conduct of public hearings as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.
3. The proposed amendment to the Zoning Map is consistent with the Comprehensive Plan, Land Use Map, and Zoning Ordinances for the County of Camas.

It is the conclusion of the Camas County Planning and Zoning Commission that the Zoning Map is in compliance with the Zoning Ordinance, Comprehensive Plan and Land Use Map and recommends approval to the Board of County Commissioners as presented on April 21<sup>st</sup>, 2008.

Marshall Ralph Marshall Ralph  
Chairman, Camas County Planning and Zoning

Date: April 22, 2008

Plaintiffs App for TRO



Findings of Camas County  
Planning and Zoning Commission

April 22, 2008

RE: Camas County Zoning Ordinance  
Hearing date: April 21, 2008

FINDING OF FACTS

1. Notice of Public Hearing:
  - a. Published Notice: Camas Courier, 4/2/08, 4/9/08, 4/16/08
  - b. Letters to Agencies: 3/14/08
2. The administrator presented the proposed Zoning Ordinance to the P & Z commission.
3. The Ordinance has been revised to reflect some changes in Camas County including an overlay district, additional dwelling units and 40 acre parcels.
4. The proposed Zoning Ordinance was prepared by the planning and zoning department.
5. The proposed Zoning Ordinance was mailed to the following political subdivisions.
  - a. Camas county weed management.
  - b. Camas Soil Conservation District
  - c. Camas County Road and Bridge.
  - d. Idaho department of fish and game.
  - e. Camas County Sheriff.
  - f. Camas County School District
  - g. Frontier Telephone
  - h. Camas County fire Marshal
  - i. Idaho Power
  - j. Frosgren Associates, Inc.
  - k. South Central Health Department
  - l. Camas County Engineer at Galena Engineers.
6. Responses have been received from Camas County Road and Bridge, South Central District Health, Camas County Soil Conservation District, & Camas Creek Weed Management Cooperative.
7. Notices were posted at all county lines and all other required locations.

Planiffs App for TRO

8. The Zoning Ordinance was amended to reflect the correct zoning in subdivisions to eliminate as many non conforming lots as possible in the county.
9. P&Z held a public hearing on April 21, 2008.
10. Notice was published in the Camas Courier as required by State Statue 67-6509.
11. All requirements for providing notice of the public hearing as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.
12. All requirements for the conduct of public hearings as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.

It is the recommendation of the Camas County Planning and Zoning Commission that the Zoning Ordinance be approved and be presented to the Board of County Commissioners on April 22<sup>nd</sup>, 2008.

Marshall Ralph: Marshall Ralph  
Chairman, Camas County Planning and Zoning

Date: April 22, 2008

Plaintiffs App for TRC

Findings of Camas County  
Planning and Zoning Commission

April 22, 2008

RE: Camas County Comprehensive Plan Map  
Hearing date: April 21, 2008

FINDING OF FACTS

1. Notice of Public Hearing:
  - a. Published Notice: Camas Courier, 4/2/08, 4/9/08, 4/16/08
  - b. Letters to Agencies: 3/14/08
2. The administrator presented the proposed Comp Plan Map to the P & Z commission.
3. The map has been revised to reflect some changes in Camas County.
4. The proposed Comp Plan Map was prepared by the planning and zoning department.
5. The proposed comprehensive plan map was mailed to the following political subdivisions.
  - a. Camas county weed management.
  - b. Camas Soil Conservation District
  - c. Camas County Road and Bridge.
  - d. Idaho department of fish and game.
  - e. Camas County Sheriff.
  - f. Camas County School District
  - g. Frontier Telephone
  - h. Camas County fire Marshal
  - i. Idaho Power
  - j. Frosgren Associates, Inc.
  - k. South Central Health Department
  - l. Camas County Engineer at Galena Engineers.
6. Responses have been received from Camas County Road and Bridge, South Central District Health, Camas County Soil Conservation District, & Camas Creek Weed Management Cooperative.
7. Notices were posted at all county lines and all other required locations.
8. The Comp Plan map was amended to plan for the future growth of the county.
9. P&Z held a public hearing on April 21, 2008.

Plaintiffs App for TRO

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10. Notice was published in the Camas Courier as required by State Statue 67-6509.
11. All requirements for providing notice of the public hearing as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.
12. All requirements for the conduct of public hearings as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.

It is the recommendation of the Camas County Planning and Zoning Commission that the Comprehensive Plan Map be approved and be presented to the Board of County Commissioners on April 22<sup>nd</sup>, 2008.

Marshall Ralph: Marshall Ralph  
Chairman, Camas County Planning and Zoning

Date: April 22, 2008

Plaintiffs App for TRO



Findings of Camas County  
Planning and Zoning Commission

April 22, 2008

RE: Camas County Comprehensive Plan  
Hearing date: April 21, 2008

FINDING OF FACTS

1. Notice of Public Hearing:
  - a. Published Notice: Camas Courier, 4/2/08, 4/9/08, 4/16/08
  - b. Letters to Agencies: 3/14/08
2. The administrator presented the proposed Comp Plan to the P & Z commission.
3. The plan has been revised to reflect some changes in Camas County.
4. The proposed Comp Plan was prepared by the planning and zoning department.
5. The proposed comprehensive plan was mailed to the following political subdivisions.
  - a. Camas county weed management.
  - b. Camas Soil Conservation District
  - c. Camas County Road and Bridge.
  - d. Idaho department of fish and game.
  - e. Camas County Sheriff.
  - f. Camas County School District
  - g. Frontier Telephone
  - h. Camas County fire Marshal
  - i. Idaho Power
  - j. Frosgren Associates, Inc.
  - k. South Central Health Department
  - l. Camas County Engineer at Galena Engineers.
6. Responses have been received from Camas County Road and Bridge, South Central District Health, Camas County Soil Conservation District, & Camas Creek Weed Management Cooperative.
7. Notices were posted at all county lines and all other required locations.
8. The Comp Plan was amended to address specific needs of the county including overly zone districts.
9. P&Z held a public hearing on April 21, 2008.

Plaintiffs App for TRO

10. Notice was published in the Camas Courier as required by State Statue 67-6509.
11. All requirements for providing notice of the public hearing as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.
12. All requirements for the conduct of public hearings as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.

It is the recommendation of the Camas County Planning and Zoning Commission that the Comprehensive Plan be approved and be presented to the Board of County Commissioners on April 22<sup>nd</sup>, 2008.

Marshall Ralph:  
Chairman, Camas County Planning and Zoning

Marshall Ralph

Date:

April 22, 2008

Plaintiffs App for TRO



# Legal Advertisements Legal Advertisements Legal Advertisements

## 2008 ZONING ORDINANCE ORDINANCE NO. 157

AN ORDINANCE OF THE CAMAS COUNTY BOARD OF COMMISSIONERS, CAMAS COUNTY, IDAHO, REPEALING ALL PREVIOUS ZONING ORDINANCES; PROVIDING ZONING REGULATIONS; TITLE, INTERPRETATION, AND ENACTMENT; DEFINITIONS; ADMINISTRATION; ESTABLISHMENT AND PURPOSE OF DISTRICTS; DISTRICT REGULATIONS; OFFICIAL SCHEDULE OF DISTRICT REGULATIONS; OFFICIAL HEIGHT AND AREA REGULATIONS; FLOOD PLAIN OVERLAY DISTRICTS; PERFORMANCE STANDARDS; HILLSIDE AND FOOTHILL AREAS DEVELOPMENT; CONDITIONAL USE PERMITS; PROCEDURES FOR PLANNED UNIT DEVELOPMENTS; NON-CONFORMING USES; APPEAL AND VARIANCE; BUILDING PERMITS; AMENDMENT PROCEDURES; AFFIRMING THAT PRESCRIBED NOTICE AND HEARING REQUIREMENTS WERE MET IN ACCORDANCE WITH TITLE 67, CHAPTER 65, IDAHO CODE; ADOPTING AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, following a public hearing held by the Camas County Planning and Zoning Commission, the County Commissioners received a recommendation from the Planning and Zoning Commission on April 22, 2008, to adopt a new Zoning Ordinance; and

WHEREAS, after sending mailings, holding public meetings and public hearings, and providing legal notice, all according to law, the County Commissioners of Camas County, Idaho, voted to approve the 2008 Zoning Ordinance; and

WHEREAS, the Camas County Commissioners hereby find that the proposed 2008 Zoning Ordinance complies with all provisions of the Idaho Code; and

WHEREAS, the Camas County Commissioners intend to repeal all previous zoning ordinances and adopt the 2008 Zoning Ordinance as the current Zoning Ordinance for Camas County;

**NOW THEREFORE BE IT ORDAINED BY THE CAMAS COUNTY COMMISSIONERS OF CAMAS COUNTY, IDAHO:**

Section 1: Repeals all previous zoning ordinances and amendments.

Section 2: Adopts and enacts this Ordinance, to be known as the 2008 Zoning Ordinance, hereby attached as Exhibit A, of Camas County which contains the following chapters.

Article I	Title, Interpretation, and Enactment
Article II	Definitions
Article III	Administration
Article IV	Establishment and Purpose of Districts
Article V	Provisions for Official Zoning Map
Article VI	District Regulations
Article VII	Official Schedule of District Regulations
Article VIII	Official Height and Area Regulations
Article IX	Flood Plain Overlay Districts
Article X	Performance Standards
Article XI	Hillside and Foothill Areas Development
Article XII	Conditional Use Permits

Article XIII	Procedures for Planned Unit Developments
Article XIV	Non-Conforming Uses
Article XV	Appeal and Variance
Article XVI	Building Permits
Article XVII	Amendment

Section 3: This ordinance shall be in full force and become effective upon adoption and publication as provided by law.

Section 4: The full text of Ordinance No. 157 is available for public inspection during normal office hours at the office of the Camas County Planning and Zoning Administrator.

ADOPTED by the Camas County Commissioners of Camas County, Idaho, this 12th day of May, 2008.

*By Ken Backstrom, County Commissioner*

*By Ron Chapman, County Commissioner*

*By Bill Davis, County Commissioner*

*ATTEST: Rollie Bennett, County Clerk*

AN ORDINANCE OF THE CAMAS COUNTY BOARD OF COMMISSIONERS, CAMAS COUNTY, IDAHO, REPEALING ANY AND ALL EXISTING ZONING DESIGNATION MAPS, AND ADOPTING THE 2008 ZONING DESIGNATION MAP, AFFIRMING THAT PRESCRIBED NOTICE AND HEARING REQUIREMENTS WERE MET IN ACCORDANCE WITH TITLE 67, CHAPTER 65, IDAHO CODE, AND PROVIDING AN EFFECTIVE DATE.

## Ordinance No. 158

WHEREAS, following a public hearing held by the Camas County Planning and Zoning Commission, the County Commissioners received a recommendation from the Planning and Zoning Commission on April 22, 2008, to adopt a new Zoning Designation Map; and

WHEREAS, the Planning and Zoning Commission and the Board of Commissioners gave particular consideration to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the County; and

WHEREAS, the Zoning Designation Map is in conformance with the Comprehensive Plan; and

WHEREAS, after sending mailings, holding public meetings and public hearings, and providing legal notice, all according to law, the County Commissioners of Camas County, Idaho, voted to approve the 2008 Zoning Designation Map; and

WHEREAS, the Camas County Commissioners hereby find that the proposed 2008 Zoning Designation Map complies with all the provisions of the Idaho Code.

**NOW THEREFORE, BE IT ORDAINED BY THE CAMAS COUNTY COMMISSIONERS OF CAMAS COUNTY, IDAHO:**

Section 1: The Camas County Commissioners hereby repeal any and all existing Zoning Designation Maps, and adopt the 2008 Zoning Designation Map attached hereto as considered, heard and adopted by the Commissioners at its May 12, 2008, meeting.

Section 2: This Ordinance shall be in full force and effect immediately upon its adoption, approval, and publication as provided by law.

Plaintiffs App for TRO

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CHRISTOPHER P. SIMMS  
Attorney at Law  
US Bank Bldg., Ste 209  
191 Sun Valley Road  
P.O. Box 3123  
Ketchum, ID 83340  
Tel: 208 622 7878  
Fax: 208 622 7129  
ISB# 7473

FILED  
10-15-08  
HR 10:20 A  
ROLLIE BENNETT  
CLERK OF THE DISTRICT COURT  
horr, Blazett

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN, )  
)  
Plaintiff, )  
)  
and )  
)  
MARTIN CUSTOM )  
HOMES, L.L.C., )  
)  
Plaintiff, )  
v. )  
)  
)  
CAMAS COUNTY, IDAHO, )  
By and through the duly elected )  
Board of Commissioners in )  
their official capacities, )  
)  
)  
KEN BAXTROM, )  
BILL DAVIS, and )  
RON CHAPMAN, )  
)  
Defendants. )

Case No. CV-2008-40

STATEMENT IN SUPPORT OF  
PROPOSED TEMPORARY  
RESTRAINING ORDER

I.R.C.P. 65 (b)

**COMES NOW, Plaintiff** through counsel, Christopher P. Simms, and files this his proposed Temporary Restraining Order and statement in support thereof,

1. I.R.C.P Rule 65(b) provides the terms under which a Temporary restraining order, may be entered, the notice and hearing required and duration thereof. Such an order should herein be entered without written on oral notice to the adverse party because by the terms of the verified complaint the immediate and irreparable injury and damage will result to applicant and is occurring on a continuing and ongoing basis.

2. Defendant, despite prior orders of this Court, continues to process land use applications under a Comprehensive Plan and Zoning Ordinance adopted by illegal process in violation of the Local Land Use Planning Act.

3. Plaintiff is immediately and adversely affected economically by such activities because his beneficial interest in real property is reduced in value by approval of subdivisions other than his own under the illegally adopted Comprehensive Plan and Zoning Ordinance.

4. The economic damage to Plaintiff is irreparable because once a subdivision is approved under the illegally adopted Comprehensive Plan and Zoning Ordinance the owner of the subdivision will have obtained a property right thereto.

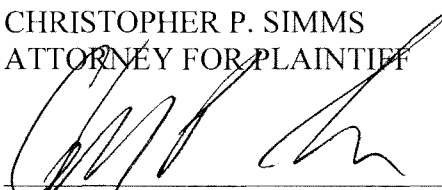
5. Counsel for Defendant has made known his intention of filing a Motion for Change of Judge, in the event this honorable court did not grant Plaintiff's Motion for Leave to Amend, adding the allegation contained herein, in Case Number CV-07-24.

6. The history of the litigation between the parties hereto has been one of delay and active efforts by counsel for Defendant to avoid the immediate jurisdiction of this court and the same is anticipated here.

7. Counsel for Plaintiff has attempted to reach Defendant's Attorney, and has left a voice mail detailing counsel's intention of approaching the Court on the morning of October 15, 2008 seeking a Temporary Restraining Order and or alternatively a date for hearing on application for Preliminary Injunction at the Court's earliest convenience.

WHEREFORE, Plaintiff prays this Honorable Court enter its Temporary Restraining Order prohibiting Defendant from processing any land use applications including but necessarily limited to subdivision applications until further order of this Court, and to set for hearing at the Court's earliest availability Plaintiff's request for Preliminary Injunction.

CHRISTOPHER P. SIMMS  
ATTORNEY FOR PLAINTIFF

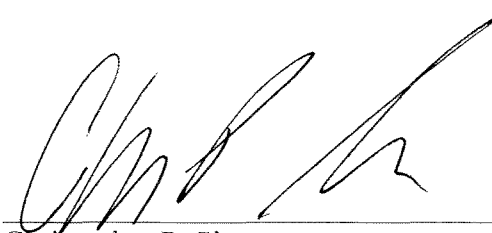


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Christopher P. Simms

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15 day of OCTOBER, 2008, a copy of STATEMENT IN SUPPORT OF PROPOSED TEMPORARY RESTRAINING ORDER, was served upon counsel via facsimile and addressed to Paul Fitzer, Attorney for Camas County Defendants 950 W. Bannock St., Ste 520, Boise, Idaho 83702, facsimile number 208 331 1202.



---

Christopher P. Simms

Paul Fitzer, ISB No. 5675  
MOORE SMITH BUXTON & TURCKE, CHTD.  
950 W. Bannock St., Suite 520  
Boise, ID 83702  
Tel: 208/331/1800  
Fax: 208/331/1202

FILED  
10-16-08  
HR 3:15 P.M.  
ROLLIE BENNETT  
CLERK OF THE DISTRICT COURT  
*[Signature]*

*Attorneys for Defendants Camas County, the Individual Commissioners, and Ed Smith in his capacity as a member of the Camas County Planning and Zoning Commission*

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR CAMAS COUNTY**

GEORGE MARTIN and MARTIN CUSTOM  
HOMES, LLC,

Plaintiffs,

v.

CAMAS COUNTY, IDAHO, by  
and through the duly elected Board of  
Commissioners in their official capacity,  
KEN BACKSTROM, BILL DAVIS, and RON  
CHAPMAN,

Defendants.

Case No. CV-2008-40

ANSWER

COME NOW, Camas County, Idaho (the County), by and through its duly elected Board of County Commissioners (the Board), Ken Backstrom, Bill Davis, and Ron Chapman (the Individual Commissioners), (collectively, County Defendants), by and through their attorneys of

ANSWER -- 1

ORIGINAL  
38

record, Moore Smith Buxton & Turcke, Chartered, and answer the Plaintiffs' Complaint for Declaratory Judgment.

This pleading is divided into three parts. In Part I, the County Defendants answer the Plaintiffs' Complaint in this matter using the same numbering scheme as in Plaintiffs' Complaint. Phrases in brackets immediately following some paragraph numbers correspond to the heading provided by Plaintiffs and in no way should be construed as an admission or denial. Unless specific responses to individual sentences or allegations are indicated, the response applies to the entire corresponding paragraph in Plaintiffs' Complaint. Part II sets forth the County Defendants' affirmative defenses; Part III contains the County Defendants' request for relief.

# **I.**

## **ANSWER TO PLAINTIFFS' COMPLAINT**

The County Defendants admit, deny, and allege as follows to Plaintiff's Paragraph No.:

1. Admit.
2. Denied.
3. County Defendants lack information sufficient to admit or deny and therefore deny.
4. Admit that the acts or omissions alleged in Plaintiffs' Complaint occurred in Camas County, Idaho to the extent those acts or omissions relate to the alleged actions of the Camas County Planning and Zoning Commission and/or Camas County Board of County Commissioners in enacting Resolution 114 and 115 and Ordinance 157 and 159, but deny the

remainder of said paragraph including reference to “all acts and activities alleged”. Otherwise, County Defendants lack information sufficient to admit or deny and therefore deny.

5. Admit insofar as the District Court for the State of Idaho has jurisdiction in this matter but denies as to the relief requested.

6. Admit that County Defendants undertook to exercise the powers authorized by Title 67 Chapter 65, commonly referred to as the Local Land Use Planning Act, by amending the Camas County Comprehensive Plan, and Zoning Ordinance, text and map, but denies the remainder of said paragraph.

7. Denied. Plaintiff brought an action seeking both petition for judicial review and a declaratory judgment among other various claims as well.

8. Denied. The Plaintiffs did not have a basis to challenge the 2006-2007 Comprehensive Plan, Land Use Map, Zoning Ordinance and Zoning Designation Map.

9. The Court’s Order speaks for itself and no response is required. Paragraph 9 is therefore denied to the extent the Plaintiff attempts to paraphrase the Court’s Order.

10. Admit insofar as the Count III was tried on or about August 19, 2008 and the parties are awaiting the Court’s Order, but denies the remainder of the paragraph.

11. Admit that the County Defendants adopted Resolutions 114 and 115, and Ordinances 157 and 159 but deny the remainder of the paragraph.

12. Denied.

13. Denied.

14. Denied.
15. Denied. Resolutions 114 and 155, Ordinances 157 and 159 were adopted on May 12, 2008.
16. Denied. Resolutions 114 and 155, Ordinances 157 and 159 were adopted on May 12, 2008.
17. Denied. County Defendants adhered to the requirements of Idaho Code Title 67, Chapter 65.
18. Paragraph 18 does not state an allegation and therefore no response is required and County Defendants therefore deny same.
19. Denied. County Defendants adhered to the requirements of Idaho Code Title 67, Chapter 65.
20. Denied. County Defendants adhered to the requirements of Idaho Code Title 67, Chapter 65.
21. Denied. County Defendants adhered to the requirements of Idaho Code Title 67, Chapter 65.
22. Denied. County Defendants adhered to the requirements of Idaho Code Title 67, Chapter 65.
23. Denied. County Defendants adhered to the requirements of Idaho Code Title 67, Chapter 65.



## **II.**

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Plaintiffs have failed to state a claim upon which relief may be granted in their favor and against the County Defendants.

#### **Second Affirmative Defense**

Plaintiffs' claims are barred his bad faith.

#### **Third Affirmative Defense**

Plaintiffs' claims are barred by laches, waiver, and estoppel.

#### **Fourth Affirmative Defense**

Any injuries suffered by Plaintiffs are a direct and proximate result of their own actions or omissions.

#### **Fifth Affirmative Defense**

Any injuries suffered by Plaintiffs are a direct and proximate result of the acts or omissions of others for whom the County Defendants are not liable.

#### **Sixth Affirmative Defense**

Plaintiffs have failed to comply with the requirements of Title 6, Chapter 9, Tort Claims against Government Entities.

#### **Seventh Affirmative Defense**

County Defendants have immunity pursuant to I.C. §§ 6-904(1), 6-904(3), and 6-904B(3).

#### **Eighth Affirmative Defense**

County Defendants are not liable for punitive damages pursuant to I.C. § 6-918.

#### **Ninth Affirmative Defense**

The Plaintiffs have not suffered actual harm or a violation of a fundamental right as required by I.C. § 67-6535.

#### **Tenth Affirmative Defense**

There is no justiciable case or controversy as the Plaintiffs lack standing to bring this action.

#### **Eleventh Affirmative Defense**

There is no justiciable case or controversy as the Plaintiff's action is not ripe and therefore premature.

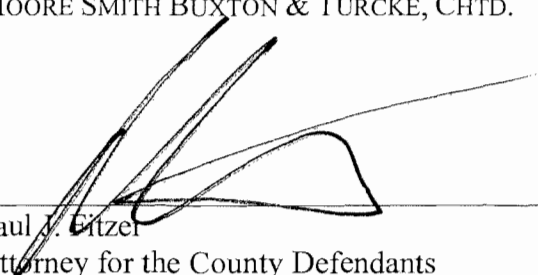
### **III.**

#### **REQUEST FOR RELIEF**

Wherefore, the answering County Defendants request that the Plaintiffs take nothing by their Petition and each cause of action pleaded therein; that the County Defendants be awarded their reasonable costs and attorney fees under I.C. §§ 12-117, 12-120, 12-121, and 6-918A; and that the Court provide the County Defendants any further relief as may be just and equitable

Dated this 16 day of October, 2008.

MOORE SMITH BUXTON & TURCKE, CHTD.



Paul J. Gitzer  
Attorney for the County Defendants

\* \* \*

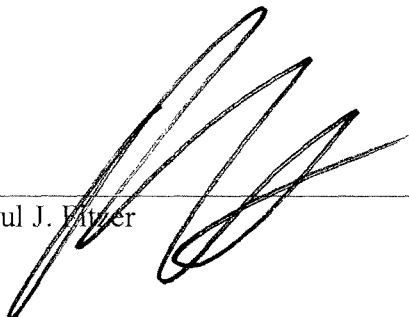
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Answer was this 16 day of October, 2008 served upon the following individuals and in the corresponding manner:

Christopher P. Simms  
P.O. Box 3123  
Ketchum, ID 83340

*Via United States mail*

Paul J. Fitzer



Paul Fitzer, ISB No. 5675  
MOORE SMITH BUXTON & TURCKE, CHTD.  
950 W. Bannock St., Suite 520  
Boise, ID 83702  
Tel: 208/331/1800  
Fax: 208/331/1202

FILED  
10-20-2008  
HR 4:58 P.M.  
ROLIE PENNETT  
*Balbir D. Walter*

*Attorneys for Defendants Camas County, the Individual Commissioners,*

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR CAMAS COUNTY**

GEORGE MARTIN and MARTIN CUSTOM  
HOMES, LLC,

Plaintiffs,

v.

ED SMITH and CAMAS COUNTY, IDAHO, by  
and through the duly elected Board of  
KEN BACKSTROM, BILL DAVIS, and RON  
CHAPMAN,

Defendants.

Case No. CV-08-40

DEFENDANTS CAMAS COUNTY,  
THE INDIVIDUAL MEMBERS OF  
THE CAMAS COUNTY BOARD OF  
COUNTY COMMISSIONERS'  
OBJECTION TO PLAINTIFFS'  
APPLICATION FOR  
PRELIMINARY INJUNCTION

Come now, Camas County, Idaho (the County), by and through its duly elected Board of County Commissioners (the Board), Ken Backstrom, Bill Davis, and Ron Chapman (the Individual Commissioners), (collectively, the County Defendants), by and through the County Defendants' legal counsel, Moore Smith Buxton & Turcke, Chtd., and object to Plaintiffs' Application for a Temporary Restraining Order, Preliminary Injunction, and Declaratory Relief.

DEFENDANTS CAMAS COUNTY AND THE INDIVIDUAL MEMBERS OF THE CAMAS COUNTY BOARD OF COUNTY COMMISSIONERS' OBJECTION TO PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND DECLARATORY RELIEF -- 1

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The County Defendants request that the Court deny Plaintiffs' Application and deny Plaintiffs any relief.

**I.**

**BACKGROUND**

**A. Plaintiff's Requested Relief**

On October 15, 2008 Plaintiffs George Martin and Martin Custom Homes, LLC filed a "Complaint for Declaratory Judgement" [sic] and an "Application for Temporary Restraining Order, Preliminary Injunction, and Declaratory Relief." Plaintiffs alleged various infirmities in the Commission's and Board's alleged amendments to Camas County's zoning ordinance and comprehensive plan which include:

- 1) Conflict of interest pursuant to 67-6506.
- 2) Procedural defects pursuant to Idaho Code 67-6509 and 67-6511.
- 3) Substantive defects pursuant to 67-6507, 67-6508, and 67-6537.

The only harm that the Plaintiff articulates he has suffered is in his application for preliminary injunction where he asserts that he will be irreparably harmed if the County is able to process land use applications as they will adversely affect real property in which he holds an interest. Plaintiff does not articulate how an alleged conflict of interest prejudices some right of the Plaintiff. He does not allege how an error in the legal notice, agency notification letter, or posting requirements harm him in any way. Having procured copies of all proposed legislation, Plaintiff was present and testified at all public hearings.

Plaintiff owns the following parcels of property in Camas County:

- 1) Property: forty acre parcel at 770 E. 240 N.
  - a. Prior to the 2008 amendments, the property was zoned Agricultural (A);
  - b. After the amendments, the property was zoned Agricultural (A).
  - c. Result: No harm.
- 2) Property: twenty-nine acre parcel west of Soldier road.

- a. Prior to the 2008 amendments, the property was Agricultural (A) allowing one unit per twenty acres;
  - b. After the amendments, the property was zoned Residential (R1), allowing one unit per acre.
  - c. Result: No harm.
- 3) Property: one acre lots, Lots 3 and 4 Blk 5, within the existing, approved, and platted Homestead Subdivision entitling one acre lots.
  - a. Prior to the 2008 amendments, the properties are zoned Agricultural Transitional (AT);
  - b. After the amendments, the property was zoned Residential (R1), allowing one unit per acre.
  - c. Result: No harm.

The application is unaccompanied by any evidence whatsoever tending to show that Plaintiff's interest in real property has been adversely affected.

**B. County Defendant's Legislative Activity**

1. The District Court of Camas County in Case No. 07-24 issued a preliminary injunction on March 7, 2008 enjoining the County from processing any land use applications pursuant to Ordinance 12, 150, and 153; zoning ordinances for the County.
2. The Court held that a county-wide zoning ordinance and map was quasi-judicial in nature and all Commission and Board members that owned property in the County that would be potentially rezoned in the adoption of a county-wide zoning ordinance and map had a conflict of interest by virtue of this ownership of property.
3. The Court however provided on the record that the County was not precluded from enacting new legislation.
4. The Board adopted a moratorium on all building permits and land use permits on March 10, 2008 to comply with the Court's March 7, 2008 Order.
5. In March 2008, the Board sent a request to the Planning and Zoning Commission to consider adopting a new zoning map pursuant to Idaho Code 67-6511.

DEFENDANTS CAMAS COUNTY AND THE INDIVIDUAL MEMBERS OF THE CAMAS COUNTY BOARD OF COUNTY COMMISSIONERS' OBJECTION TO PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND DECLARATORY RELIEF -- 3

6. The Commission held several meetings to discuss the new ordinances and resolutions; the drafts of which had been prepared by the planning staff.

7. Notice of Public Hearing before the Camas County Planning and Zoning Commission on the draft 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map were published in accordance with the requirements of Title 67, Chapter 65, Idaho Code having been published in the April 2, April 9, and April 16, 2008 editions to the Camas County Courier.

8. Notices were posted at all county lines and all other required locations. Notice of the intent to amend the proposed legislation along with copies of the proposed legislation was mailed to the political subdivisions providing services within the planning jurisdiction.

9. The Commission held public hearings on the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map on April 21, 2008. All members of the Planning and Zoning Commission that owned land in the County that may potentially be rezoned by the adoption of a new zoning map recused themselves on the record and refrained from participating in the proceedings to adopt said legislation.

10. The administrator presented the proposed legislation to the Commission. The Commission noticed and conducted the hearing pursuant to Title 67, Chapter 65 Idaho Code.

11. The Commission allowed all interested persons to provide testimony and reviewed all written testimony. The Plaintiff was provided notice and opportunity to be heard at said public hearings. Plaintiff testified at said public hearings. The public hearing was closed at the conclusion of the April 21 public hearing.

12. The Commission then took up the matter and rendered its recommendation to forward the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map to the Board for consideration.

13. The Board received the Commission's recommendation in a board meeting on April 22, 2008. The members of the Board that owned property in the County that potentially may be rezoned recused themselves on the record and refrained from participating in any of the proceedings to adopt the proposed zoning map.

DEFENDANTS CAMAS COUNTY AND THE INDIVIDUAL MEMBERS OF THE CAMAS COUNTY BOARD OF COUNTY COMMISSIONERS' OBJECTION TO PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND DECLARATORY RELIEF -- 4



14. Notice of Public Hearing before the Camas County Board of County Commissioners on the draft 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map were published in accordance with the requirements of Title 67, Chapter 65, Idaho Code having been published in the April 23 , April 30, and May 7, 2008 editions to the Camas County Courier including all posting requirements and notice of the Commission's recommendation.

15. On May 12, 2008, the Board conducted public hearings on the proposed legislation taking public and written testimony. Plaintiff testified at all public hearings. The public hearing was closed on May 12, 2008 at the conclusion of testimony. The Board then took up the matter and rendered its decision.

16. By Resolution 114 and 115 the County added the Comprehensive Plan and Land Use Map. By Ordinance 157 and 159, the County adopted the Zoning Ordinance and Map.

17. At the public hearings, testimony was mixed. A petition was submitted with over 100 names supporting the County's adoption of the new legislation. The majority of the testimony against the adoption concerned the litigation against the County or other such complaints. Notably, they did not include substantive or relevant testimony as to the legislation itself including actual zoning districts, planning components, etc.

18. The property which is the subject of the draft 2008 Zoning Map is the entirety of Camas County. Camas County consists of largely agricultural land. A majority of the private land in Camas County is used for farming and ranching. A majority of the County was zoned agriculture to comply with the Land Use Section of the Comprehensive Plan that states the preservation of agricultural uses is of utmost importance. Commercial and residential zones were placed in areas of existing development to channel development away from the large agricultural areas and allow pre-existing community centers some additional growth to support schools and economic development in the County.

19. The Land Use Section of the Comprehensive Plan states that the northern part of the county would be a poor area for development. With the exception of some residential density to

reflect current subdivisions located on the South Fork of the Boise River (over Fleck Summit), the northern portion of the County is zoned agricultural.

20. The Land use Section of the Comprehensive Plan states that commercial and residential use has traditionally been located in Fairfield, Soldier, West Magic, Corral, Hill City, Manard and Blaine. The Land Use Section states that the areas in Camas County most suited for higher density are the platted townsites and adjacent to West Magic (a community center). Fairfield is the only incorporated town. Soldier, Corral, Hill City, Manard and Blaine are platted townsites. West Magic is not a platted townsite but several platted subdivisions are located there. Residential and commercial uses were zoned in the platted townsites and West Magic to comply with existing conditions and center any future commercial and residential development in established areas. Commercial and residential development was zoned in the Soldier Creek vicinity to reflect current development and channel development to established areas. Residential development was zoned in the Willow Creek vicinity to reflect current development and channel development to established areas. Commercial and residential development was zoned in the Solider Mountain Ranch area to reflect current development and channel development to established areas. Additional higher density residential zones were established near Soldier Mountain Ranch area, where existing subdivisions such as Mountain Sun and Smoky Dome Ranchos already exist. Some low density residential is zoned in the Squaw Flats area to reflect current development and allow for limited residential development in that area.

21. The 2008 zoning map is in accordance with the text of the County's Comprehensive Plan and Land Use Map as adopted by Resolution 103, on March 29, 2007. The Comprehensive Plan land use map was not enjoined by the Court in its March 7, 2008 injunction.

22. The Board considered the effect the zoning would have on affected political subdivisions that provide services to the County. The Board determined that the County should be zoned to provide for some growth in residential and commercial development to provide students and a tax base to support the schools. However, the growth must be controlled to avoid overwhelming

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the schools with too many new students at once. The Board determined that the draft 2008 Zoning Map accomplishes these goals. The Board determined that the irrigation districts would not be adversely affected. The Board determined that the fire districts would not be adversely affected.

## II. ARGUMENT

Idaho R. Civ. P. 65(e) sets forth the circumstances which will justify a preliminary injunction:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.

(3) When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

(4) When it appears, by affidavit, that the defendant during the pendency of the action, threatens, or is about to remove, or to dispose of the defendant's property with intent to defraud the plaintiff, an injunction order may be granted to restrain the removal or disposition.

Idaho R. Civ. P. 65(e)(1)-(4).

None of the circumstances articulated in Rule 65(e) apply as the Plaintiff wholly fails to allege specific factual information tending to show that he is entitled to the requested relief; the enjoinder of county-wide legislation, or that he has suffered irreparable injury or had a fundamental right substantially impaired.

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**A. Preliminary Injunctive Relief requires Plaintiff to demonstrate that he is entitled to the requested relief; that he has suffered irreparable injury; that a fundamental right has been substantially impaired.**

Preliminary injunctions do not issue upon a whim: Plaintiffs carry the burden to prove a right to an injunction, *Lawrence Warehouse Co. v. Rudio Lumber Co.*, 89 Idaho 389, 405 P.2d 634 (1965), and “a preliminary mandatory injunction is granted only in extreme cases where the right is very clear and it appears that irreparable injury will flow from its refusal,” *Evans v. District Court of the Fifth Judicial District*, 47 Idaho 267, 270, 275 P. 99, 100 (1929). As the Supreme Court of Idaho has said, “[t]he substantial likelihood of success necessary to demonstrate that appellants are entitled to the relief they demanded cannot exist where complex issues of law or fact exist which are not free from doubt.” *Harris v. Cassia County*, 106 Idaho 513, 518, 681 P.2d 988, 994 (1984) (quoting *First National Bank & Trust Co. v. Federal Reserve Bank*, 495 F.Supp. 154 (W.D. Mich. 1980); *Avins v. Widener College, Inc.*, 421 F.Supp. 858 (D. Del. 1976) (injunction not granted where issues of fact and law are seriously disputed); *Wm. Rosen Monuments, Inc. v. Phil Madonick Monuments, Inc.*, 62 A.D.2d 1053, 404 N.Y.S.2d 133 (N.Y. App. Div. 1978) (injunction granted only upon the clearest evidence)).

#### **1. Declaratory Judgment Action Challenges to Legislative Activity**

To obtain preliminary injunctive relief pursuant to IRCP 65(e)(1), Plaintiff must demonstrate that he is entitled to a declarative judgment enjoining the County’s legislative activity. Idaho Code §10-1202 provides that:

“[a]ny person ... whose rights ... are affected by a ... municipal ordinance .. may have determined any question of construction or validity arising under the ... ordinance ... and obtain a declaration of rights... .

To prevail, the Plaintiff carries the burden to provide a clear showing that 1) there is a justiciable case or controversy; 2) that he has standing to bring a declarative action; 3) that the

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ordinance in question was confiscatory, arbitrary, unreasonable, and capricious; 4) that the Plaintiff has suffered actual harm or a substantial right has been prejudiced; and 5) the nexus that this actual harm was caused by the County's actions.

**a. Preliminary Requirements: An Actual or Justiciable Controversy - Standing**

As a matter of constitutional and state law, a declaratory judgment may only be rendered where an actual or justiciable controversy exists lodged by one who has suffered particularized or personal harm that is different than that suffered by any other member of the public. *Harris v. Cassia County*, 106 Idaho 513, 516, 681 P.2d 988, 991 (1984). *Miles v. Idaho Power Co.*, 116 Idaho 635, 639, 778 P.2d 757, 761 (1989); *Selkirk-Priest Basin Assoc., Inc. v. State ex rel. Batt*, 128 Idaho 831, 834, 919 P.2d 1032, 1035 (1996). "Although the Declaratory Judgment Act, Idaho Code Title 10, chapter 12, bestows the authority to declare rights, status, or other legal relations, that authority is circumscribed by the rule that 'a declaratory judgment can only be rendered in a case where an actual or justiciable controversy exists'." *Schneider v. Howe*, 142 Idaho 767, 772, 133 P.3d 1232, 1237 (2006) quoting *Harris*, 106 Idaho at 516, 681 P.2d at 991. Generally, justiciability questions are divisible into several sub-categories; one of which is standing. *Id.* See also *Miles*, 116 Idaho at 639, 778 P.2d at 761.

The Declaratory Judgment Act does not relieve a party from showing that it has standing to bring the action in the first instance. *Selkirk-Priest*, 128 Idaho at 834, 919 P.2d at 1035. Standing, meaning a party's right to seek judicial enforcement of a right, is a "fundamental prerequisite" to invoking the jurisdiction of the courts. *Noh v. Cenarrusa*, 137 Idaho 798, 800, 53 P.3d 1217, 1219 (2002). Standing is a component of the constitutionally-based case-or-controversy rule and the threshold necessary to obtain standing cannot be legislated to require less than the constitutional test. *Noh*, 137 Idaho at 801, 53 P.3d at 1220. In other words, the declaratory judgment act is not a forum for those with general complaints about the conduct of one's local governing board. When considering whether a party has standing, the focus is on the party, not the issues the party raises. *Miles*, 116 Idaho at 641, 778 P.2d at 763.

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The essence of the standing inquiry is whether the party seeking to invoke the court's jurisdiction has "alleged such a personal stake in the outcome of the controversy as to assure the concrete adversariness which sharpens the presentation upon which the court so depends for illumination of difficult constitutional questions." As refined by subsequent reformation, this requirement of "personal stake" has come to be understood to require not only a "distinct palpable injury" to the plaintiff, but also a "fairly traceable" causal connection between the claimed injury and the challenged conduct.

*Id.* To satisfy the standing requirement, the Plaintiff must "allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury." *Id.* Or, put differently, the Plaintiff must possess a "personal stake" in the controversy. See *Rural Kootenai Org., Inc. v. Board of Comm'rs*, 133 Idaho 833, 841, 993 P.2d 596, 604 (1999). Indeed, the Plaintiff must show a "peculiar or personal injury that is different than that suffered by any other member of the public." *Selkirk-Priest*, 128 Idaho at 834, 919 P.2d at 1035.

Where the courts have upheld the standing of a plaintiff in a land use matter, a central factor in establishing standing was plaintiff's proximity to the affected areas coupled with a particularized harm. In *McCuskey v. Canyon County*, 123 Idaho 657, 851 P.2d 953 (1993), the appellant challenged the Canyon County Zoning Ordinance because it downzoned his property from heavy industrial to a rural residential. The court found that he had standing by virtue of the actual downzone of his property.

In *Butters v. Hauser*, 131 Idaho 498, 501, 960 P.2d 181, 184 (1998) the plaintiff challenged a Latah County approval of an applicant's conditional use permit to erect a radio transmission tower. While an important factor, the Court reasoned that even the proximity is not enough to achieve standing; that individualized harm was the paramount requirement:

[A] grievance relating to status as an owner of land within a designated area does not relieve a complainant of the necessity of demonstrating a "distinct palpable injury" traceable to the challenged governmental conduct. It is the quality or magnitude of the injury suffered which must differentiate a plaintiff from the citizenry at large in order to confer standing. The situs of owned property in

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relationship to an area touched by an ordinance is relevant to a standing inquiry only insofar as the property's location exposes the landowner to peculiarized harm.

*Id.* In *Bopp v. City of Sandpoint*, 110 Idaho 488, 716 P.2d 1260 (1986), the plaintiff challenged a city ordinance vacating a public right-of-way in a bridge and the city's subsequent lease of the underlying property for development of a shopping center. The Supreme Court held that because Bopp, who owned no property adjacent to the vacated right-of-way, asserted no injury peculiar to himself, but only such injury as was sustained by the general public, he could not maintain the declaratory judgment action.

The Plaintiff has wholly failed to meet its burden to demonstrate that the Comprehensive Plan and Land Use Map, Zoning Ordinance, and Zoning Map has caused him to suffer any actual, threatened, or particularized harm and he therefore does not have standing to prevail in this cause of action. Without such a showing, he cannot meet the requirements under IRCP 65(e)(1); that he has alleged sufficient factual evidence demonstrating that he is entitled to enjoin county-wide legislation. His relief amounts to each and every property owner in the County be precluded from having a land use application be processed by the County. What injury has he suffered to obtain such a far reaching relief? It is the relief sought that will cause the harm to every property owner in the County. As provided the Plaintiff's properties have not undergone a downzone. His properties have in fact remained the same or even upzoned. Plaintiff fails to allege any facts that his or other properties have been upzoned, downzoned, or changed in any way that is causally related to his own. He does not allege any facts tending to demonstrate a conflict of interest much less than how this conflict affects his interests. In short, he alleges many procedural and substantive errors, which the County vehemently denies, but even, if true, do not substantially impair a fundamental right of Plaintiff's.

As *Giltner Dairy, LLC v. Jerome County*, 145 Idaho 630, 181 P.3d 1238 (2008) and *Highland's Development Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2008) suggest, a comprehensive plan, zoning ordinance, and zoning map do not by their very legislative nature

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confer a right to develop, but are merely legislation applicable to property county-wide. The state legislature granted local governing boards the authority to exercise legislative judgment in determining the appropriate zoning designation throughout its jurisdiction — an individual has no right to a particular zone. The Plaintiff does not bring this declarative judgment action to appeal a denied permit or application. Instead, he challenges the ordinances themselves. Without an application, there is no right to a particular zone; without a right to a particular zone, there can be no injury. Plaintiff does not have the standing to claim injunctive relief, whether preliminary or permanently.

***b. Due Process - Restrained Standard of Review in Challenges to Legislative Actions***

Plaintiff will be unable to demonstrate that he is entitled to the overreaching relief sought pursuant to IRCP 65(e)(1)(2) or (3) since the County is acting in its legislative capacity. Plaintiff seeks injunctive relief due to numerous procedural and substantive violations. Such injunctive relief can be a remedy where a particular affected plaintiff can demonstrate that was not provided sufficient due process considerations including notice and an opportunity to be heard. Plaintiff, however, has not alleged sufficient factual evidence tending to show that he has suffered actual harm or had a fundamental right substantially impaired sufficient to invoke the stricter due process protections. The County in enacting county-wide ordinances is acting in its legislative capacity.

Legislative actions are to be evaluated with a restricted standard of review; as a form of judicial deference to legislative actions. *Cooper v. Ada County Comm'rs*, 101 Idaho 407, 410, 614 P.2d 947, 950; *Gay v. County Commissioners of Bonneville County*, 103 Idaho 626, 627 651 P.2d 560, 561 (Idaho App. 1982). Judicial review of legislative actions of a local zoning board is limited to a review of whether the action is arbitrary and capricious. *Cooper*, 101 Idaho at 409, 614 P.2d at 949. Courts are not justified in preventing the enforcement of a legislative enactment by declaring it invalid unless it is a clear violation of some provision of the Constitution. It is not for the Court to endorse or criticize the value of specific legislative

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enactments, because the political process is better suited to contend with the complex questions of public policy and competing social interest. "Legislative action is shielded from direct judicial review by its high visibility and widely felt impact, on the theory that the appropriate remedy can be had at the polls." *Burt v. City of Idaho Falls*, 105 Idaho 65, 68, 665 P.2d 1075, 1078 (1983) *quoting Cooper*, 101 Idaho at 410, 614 P.2d at 950.

In the legislative context, Plaintiff is entitled to some notice. In quasi-judicial actions the County would be subject to strict due process constraints requiring that an affected person is afforded sufficient process to ensure that the individual is not arbitrarily deprived of his rights in violation of state or federal constitutions. This means that the individual must be provided with notice and an opportunity to be heard. This is not a quasi-judicial proceeding. Plaintiff is not an affected party pursuant to LLUPA. Thus, Plaintiff is not afforded stricter constitutional due process protections. Nonetheless, the adoption of comprehensive plans, zoning ordinances and maps do have statutory notice and hearing provisions such that the failure to adhere to such statutory requirements could deny an *affected* party notice and opportunity to be heard.

For example in *McCuskey*, Canyon County issued a stop work order to the plaintiff who was building a gas station on land recently downzoned from industrial to residential. The plaintiff sought a declarative judgment declaring the ordinance downzoning his property void because he had not received notice of the hearing. The Idaho Supreme Court agreed on procedural grounds holding that the Plaintiff was challenging the enactment of the ordinance as opposed to an argument that the authorities made the wrong decision. Further, as the zoning ordinance affected the plaintiff's land, i.e. the downzoning was a particularized harm, McCuskey was entitled to mailed notice of the hearing pursuant to Idaho Code §67-6511(b). Of import to note, the court did not substitute its judgment as to whether the property should have been downzoned. Further, the court did not simply find that the county failed to follow procedural statutory guidelines. Rather, the court limited its review as to whether the plaintiff 1) had suffered harm; 2) was entitled to notice; and 3) had received notice. If all three elements were

met, then and only then, did the court have the power to void the county's legislation due to its statutory procedural error.

Idaho Code §67-6509 provides the notice and hearing requirements necessary to adopt or amend a comprehensive plan and, by reference from Idaho 67-6511, a zoning ordinance. The County complied with such requirements. The Camas County Planning and Zoning Commission and thereafter the Board conducted at least one public hearing in adopting the 2008 legislation in which interested persons had the opportunity to be heard including Plaintiff. Legal notices of the time and place of the hearings were published in the Camas County Courier and the copies of the plan and map were available for review prior to the hearing. All public hearings were recorded. Plaintiff attended and testified at length at each and every hearing. The planning commission provided a written recommendation of approval to the board.

Plaintiff was afforded a meaningful opportunity to be heard at the public hearings. He attended and testified at each. Plaintiff alleges numerous procedural errors but wholly fails to demonstrate that his substantial rights were prejudiced by virtue of a procedural error; *Spencer*, 145 Idaho at 453, 180 P.3d at 492. In *Cowan v. Board of Com'rs of Fremont County*, 143 Idaho 501, 512, 148 P.3d 1247, 1258 (2006), the court noted:

[T]he Board concedes that both notices were defective. Nonetheless, Cowan has failed to demonstrate that his substantial rights were prejudiced by either defective notice. First, Cowan's counsel attended the ... hearing and submitted a brief objecting to notice. Moreover, Cowan spoke against the application at that hearing. Therefore, even if the notice were defective, Cowan has failed to demonstrate how this defect prejudiced his substantial rights since he clearly had notice of the meeting.

*Cowan*, 143 Idaho at 513, 148 P.3d at 1259. Plaintiff attended and testified at all public hearings and thus had actual notice. Plaintiff's actual notice and attendance act as a waiver to the

County's alleged defective notice. The nexus connecting any alleged procedural error and substantive right of the Plaintiff is simply not present.<sup>1</sup>

*c. Conflict of Interest – Denial of Due Process?*

Idaho Code §67-6506 provides that members of the planning and zoning commission and the county board shall not participate in any proceeding or action when he has an economic interest in the procedure or action. In order to obtain preliminary injunctive relief due to a conflict of interest, Plaintiff bears the burden to demonstrate that a substantial right was prejudiced or he suffered actual harm as a result of this conflict of interest.

In *Manookian v. Blaine County*, 112 Idaho 697 (1987), the applicant sought a conditional use permit to construct an electrical transmission lines. Three potential routes were identified to locate the lines: 1) the "Idaho Power route" which ran through property owned by two of the planning and zoning commissioners; 2) the "desert route" which runs away from the planning commissioners' property; and 3) the route ultimately approved by the planning and zoning commissioners, the "toe of the hills route", which crossed the property owned by the plaintiffs. The court reasoned that utility transmission lines, either the Idaho Power or Desert route impacted the Commissioners' land both physically and visually and thus constituted an economic interest. Similarly, the chosen route impacted the plaintiff's property.

The present action is distinguishable from *Manoonkian*. In *Manoonkian*, the properties owned by the planning members were the subject of a specific application. The members specifically diverted attention from their own properties which would have suffered particularized harm. Instead, the plaintiff's property was burdened. Thus, there was a causal and spatial connection, a nexus, between the respective properties as possible locations for the power lines. In contrast, the present action is purely legislative activity. Plaintiff alleges that the

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<sup>1</sup> Plaintiff additionally alleges that the County did not send notice to all political subdivisions providing services in the planning area. Again, should such a procedural error exist, Plaintiff must carry its burden to show how this defect prejudiced his substantial due process rights. Again, the nexus of the defect precipitating or causally relating to his particularized injury is absent.

Commission and Board members have a conflict by virtue of being property owners. Plaintiff has failed to demonstrate the nexus, a spatial proximity or relationship, between the effect that the zoning might have had on his property and the alleged conflicted member's property. Plaintiff fails to show that he has suffered actual, particularized harm due this alleged conflict. His properties remain unaffected, even benefited, by the zoning map. The County members cannot be deemed to have a conflict of interest causing harm to Plaintiff by virtue of their status as property owners within the County. The evidence demonstrates that the governing board members' properties were zoned as part of a county-wide zoning plan based upon independent, historical, sound planning principles. There is no evidence suggesting that a change in zoning designations were motivated by an economic interest resulting in an economic benefit to the board members or harm to the plaintiff. Lastly, the potentially affected Commission and Board members who owned property in the county recused themselves from the enactment of the new ordinances due to the Court's preliminary order in case 07-24. They did not take part in the proceedings and thus Plaintiff cannot invoke injunctive relief pursuant to this statute.

*d. Actual Harm*

To obtain preliminary injunctive relief under IRCP 65(e)(2) or (3) the Plaintiff bears the burden to demonstrate a nexus; that some confiscatory, arbitrary, unreasonable, or capricious violation of constitutional or statutory principles caused the plaintiff actual harm or prejudiced a substantial right of the Plaintiff. Even if the Plaintiff can demonstrate that the County committed error, such as a defective notice, the error alone cannot serve to enjoin the County's zoning ordinances and comprehensive plan. Plaintiff must show error and demonstrate the proper nexus that the error actually caused his alleged harm or prejudiced his substantial rights. *Cowan*, 143 Idaho at 513, 148 P.3d at 1259. He must demonstrate that any errors committed in enacting the comprehensive plan or zoning ordinances, *as applied to his property*, was confiscatory, arbitrary, unreasonable, and void. *Sprenger, Grubb, & Associates v. City of Hailey*, 127 Idaho 576, 586 903 P.2d 741, 751 (1995).

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Plaintiff's property remains unchanged perhaps even benefited by the zoning amendments. He has provided no evidence tending to show harm of any kind. He has provided no evidence tending to show that adjacent properties were upzoned to his detriment. He has provided no evidence to show that his property has been downzoned. It is the remaining property owners of the County that will be harmed if the Plaintiff prevails in this preliminary injunction which seeks to prevent the County from processing anyone's land use application.

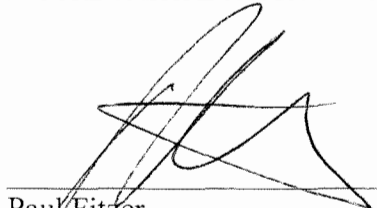
### III.

#### CONCLUSION

On its face, Plaintiffs' Application for a temporary restraining order and a preliminary injunction is inappropriate. Therefore, their request for a temporary restraining order and a preliminary injunction must be denied. Defendants respectfully request reasonable attorney fees and costs incurred in defending the Plaintiffs' Application for a Temporary Restraining Order and Preliminary Injunction.

Dated this 21 day of October, 2008.

MOORE SMITH BUXTON & TURCKE, CHTD.

  
\_\_\_\_\_  
Paul Fitzer  
Attorney for the County Defendants

DEFENDANTS CAMAS COUNTY AND THE INDIVIDUAL MEMBERS OF THE CAMAS COUNTY BOARD OF COUNTY COMMISSIONERS' OBJECTION TO PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND DECLARATORY RELIEF -- 17

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\* \* \*

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection was this 21  
day of October, 2008 served upon the following individuals and in the corresponding manner:

Christopher P. Simms  
P.O. Box 3123  
Ketchum, ID 83340

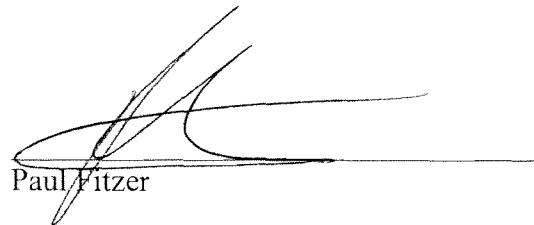
Method: \_\_\_\_\_

Phillip J. Collaer  
ANDERSON JULIAN & HULL, LLP  
P.O. Box 7426  
Boise, ID 83707

Method: \_\_\_\_\_

Hon. Robert Elgee  
Blaine County Courthouse (resident chambers)  
202 S. Second Ave. S, Suite 110  
Hailey, ID 83333

Method: \_\_\_\_\_

  
Paul Fitzer

DEFENDANTS CAMAS COUNTY AND THE INDIVIDUAL MEMBERS OF THE CAMAS  
COUNTY BOARD OF COUNTY COMMISSIONERS' OBJECTION TO PLAINTIFFS'  
APPLICATION FOR A TEMPORARY RESTRAINING ORDER, PRELIMINARY  
INJUNCTION, AND DECLARATORY RELIEF -- 18

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Paul Fitzer, ISB No. 5675  
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FILED  
10-20-2008  
HR 5:00 P. M.  
ROLLIE BENNETT  
CLERK OF THE DISTRICT COURT  
*Rollie Bennett*

*Attorneys for Defendants Camas County and the Individual Commissioners*

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR CAMAS COUNTY**

GEORGE MARTIN and MARTIN CUSTOM  
HOMES, LLC,

Plaintiffs,

v.

CAMAS COUNTY, IDAHO, by and through  
the duly elected Board of Commissioners  
in their official capacity, KEN BACKSTROM  
BILL DAVIS, and RON CHAPMAN,

Defendants.

Case No. CV-08-40

AFFIDAVIT OF DWIGHT BUTLIN IN  
SUPPORT OF DEFENDANTS'  
OBJECTION TO PLAINTIFFS' VERIFIED  
APPLICATION FOR A TEMPORARY  
RESTRAINING ORDER,  
PRELIMINARY INJUNCTION AND  
DECLARATORY RELIEF

State of Idaho )  
 ) ss.  
County of Camas )

Dwight Butlin, being first duly sworn, sayeth as follows:

AFFIDAVIT OF DWIGHT BUTLIN IN SUPPORT OF DEFENDANTS' OBJECTION TO  
PLAINTIFFS' VERIFIED APPLICATION FOR A TEMPORARY RESTRAINING ORDER  
PRELIMINARY INJUNCTION, AND DECLARTORY RELIEF -- 1

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1. My name is Dwight Butlin. I am an adult human being over the age of 18 years, and I am of sound mind. The statements made in this affidavit are made upon my own personal knowledge and are true to the best of my knowledge.

2. I am the Planning Administrator for Camas County. I have served as such since November 2006.

3. By virtue of working as the Planning Administrator, I am familiar with the issues pertaining to the current legal action against the County; the legal process and substantive enactment of the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map passed by the Planning and Zoning Commission and the County Board of Commissioners in May, 2008; and of the Plaintiff's properties.

4. Plaintiff owns the following parcels of property in Camas County:

- 1) Property: forty acre parcel at 770 E. 240 N.
  - a. Prior to the 2008 amendments, the property was zoned Agricultural (A);
  - b. After the amendments, the property was zoned Agricultural (A).
- 2) Property: twenty-nine acre parcel west of Soldier road.
  - a. Prior to the 2008 amendments, the property was Agricultural (A) allowing one unit per twenty acres;
  - b. After the amendments, the property was zoned Residential (R1), allowing one unit per acre.
- 3) Property: one lots within the existing, approved, and platted Homestead Subdivision.
  - a. Prior to the 2008 amendments, the properties are zoned Agricultural Transitional (AT);
  - b. After the amendments, the property was zoned Residential (R1), allowing one unit per acre.



5. The District Court of Camas County in Case No. 07-24 issued a preliminary injunction on March 7, 2008 enjoining the County from processing any land use applications pursuant to Ordinance 12, 150, and 153; zoning ordinances for the County.
6. The Court held that a county-wide zoning ordinance and map was quasi-judicial in nature and all Commission and Board members that owned property in the County that would be potentially rezoned in the adoption of a county-wide zoning ordinance and map had a conflict of interest by virtue of this ownership of property.
7. The Court however provided on the record that the County was not precluded from enacting new legislation.
8. The Board adopted a moratorium on all building permits and land use permits on March 10, 2008 to comply with the Court's March 7, 2008 Order.
9. In March 2008, the Board sent a request to the Planning and Zoning Commission to consider adopting a new zoning map pursuant to Idaho Code 67-6511.
10. The Commission held several meetings to discuss the new ordinances and resolutions; the drafts of which had been prepared by the planning staff.
11. Notice of Public Hearing before the Camas County Planning and Zoning Commission on the draft 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map were published in accordance with the requirements of Title 67, Chapter 65, Idaho Code having been published in the April 2, April 9, and April 16, 2008 editions to the Camas County Courier.

12. Notices were posted at all county lines and all other required locations. Notice of the intent to amend the proposed legislation along with copies of the proposed legislation was mailed to the political subdivisions providing services within the planning jurisdiction.

13. The Commission held public hearings on the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map on April 21, 2008. All members of the Planning and Zoning Commission that owned land in the County that may potentially be rezoned by the adoption of a new zoning map recused themselves on the record and refrained from participating in the proceedings to adopt said legislation.

14. The administrator presented the proposed legislation to the Commission. The Commission noticed and conducted the hearing pursuant to Title 67, Chapter 65 Idaho Code.

15. The Commission allowed all interested persons to provide testimony and reviewed all written testimony. The Plaintiff was provided notice and opportunity to be heard at said public hearings. Plaintiff testified at said public hearings. The public hearing was closed at the conclusion of the April 21 public hearing.

16. The Commission then took up the matter and rendered its recommendation to forward the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map to the Board for consideration.

17. The Board received the Commission's recommendation in a board meeting on April 22, 2008. The members of the Board that owned property in the County that potentially may be rezoned recused themselves on the record and refrained from participating in any of the proceedings to adopt the proposed zoning map.

18. Notice of Public Hearing before the Camas County Board of County Commissioners on the draft 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map were published in accordance with the requirements of Title 67, Chapter 65, Idaho Code having been published in the April 23 , April 30, and May 7, 2008 editions to the Camas County Courier including all posting requirements and notice of the Commission's recommendation.

19. On May 12, 2008, the Board conducted public hearings on the proposed legislation taking public and written testimony. Plaintiff testified at all public hearings. The public hearing was closed on May 12, 2008 at the conclusion of testimony. The Board then took up the matter and rendered its decision.

20. By Resolution 114 and 115 the County added the Comprehensive Plan and Land Use Map. By Ordinance 157 and 158, the County adopted the Zoning Ordinance and Map.

21. At the public hearings, testimony was mixed. A petition was submitted with over 100 names supporting the County's adoption of the new legislation. The majority of the testimony against the adoption concerned the litigation against the County or other such complaints. Notably, they did not include substantive or relevant testimony as to the legislation itself including actual zoning districts, planning components, etc.

22. The property which is the subject of the draft 2008 Zoning Map is the entirety of Camas County. Camas County consists of largely agricultural land. A majority of the private land in Camas County is used for farming and ranching. A majority of the County was zoned agriculture to comply with the Land Use Section of the Comprehensive Plan that states the

preservation of agricultural uses is of utmost importance. Commercial and residential zones were  
AFFIDAVIT OF DWIGHT BUTLIN IN SUPPORT OF DEFENDANTS' OBJECTION TO  
PLAINTIFFS' VERIFIED APPLICATION FOR A TEMPORARY RESTRAINING ORDER  
PRELIMINARY INJUNCTION, AND DECLARTORY RELIEF -- 5

68

placed in areas of existing development to channel development away from the large agricultural areas and allow pre-existing community centers some additional growth to support schools and economic development in the County.

23. The Land Use Section of the Comprehensive Plan states that the northern part of the county would be a poor area for development. With the exception of some residential density to reflect current subdivisions located on the South Fork of the Boise River (over Fleck Summit), the northern portion of the County is zoned agricultural.

24. The Land use Section of the Comprehensive Plan states that commercial and residential use has traditionally been located in Fairfield, Soldier, West Magic, Corral, Hill City, Manard and Blaine. The Land Use Section states that the areas in Camas County most suited for higher density are the platted townsites and adjacent to West Magic (a community center). Fairfield is the only incorporated town. Soldier, Corral, Hill City, Manard and Blaine are platted townsites. West Magic is not a platted townsite but several platted subdivisions are located there. Residential and commercial uses were zoned in the platted townsites and West Magic to comply with existing conditions and center any future commercial and residential development in established areas. Commercial and residential development was zoned in the Soldier Creek vicinity to reflect current development and channel development to established areas. Residential development was zoned in the Willow Creek vicinity to reflect current development and channel development to established areas. Commercial and residential development was zoned in the Solider Mountain Ranch area to reflect current development and channel

development to established areas. Additional higher density residential zones were

AFFIDAVIT OF DWIGHT BUTLIN IN SUPPORT OF DEFENDANTS' OBJECTION TO  
PLAINTIFFS' VERIFIED APPLICATION FOR A TEMPORARY RESTRAINING ORDER  
PRELIMINARY INJUNCTION, AND DECLARTORY RELIEF -- 6

established near Soldier Mountain Ranch area, where existing subdivisions such as Mountain Sun and Smoky Dome Ranchos already exist. Some low density residential is zoned in the Squaw Flats area to reflect current development and allow for limited residential development in that area.

25. The 2008 zoning map is in accordance with the text of the County's Comprehensive Plan and Land Use Map as adopted by Resolution 103, on March 29, 2007. The Comprehensive Plan land use map was not enjoined by the Court in its March 7, 2008 injunction.

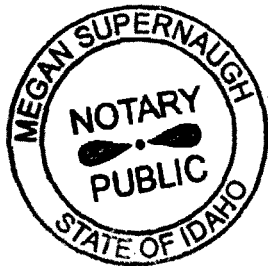
26. The Board considered the effect the zoning would have on affected political subdivisions that provide services to the County. The Board determined that the County should be zoned to provide for some growth in residential and commercial development to provide students and a tax base to support the schools. However, the growth must be controlled to avoid overwhelming the schools with too many new students at once. The Board determined that the draft 2008 Zoning Map accomplishes these goals. The Board determined that the irrigation districts would not be adversely affected. The Board determined that the fire districts would not be adversely affected.

Further your affiant sayeth naught.

Dated this 20<sup>th</sup> day of October, 2008.

Dwight H. Butlin  
Dwight Butlin

Subscribed and sworn to before me this 20<sup>th</sup> day of October, 2008.



Megan Supernaugh  
Notary Public for Idaho

Residing at: Fairfield, Idaho

My commission expires: 9/14/13

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Affidavit of Dwight Butlin was this 20th day of October, 2008 served upon the following individuals and in the corresponding manner:

Christopher P. Simms  
P.O. Box 3123  
Ketchum, ID 83340

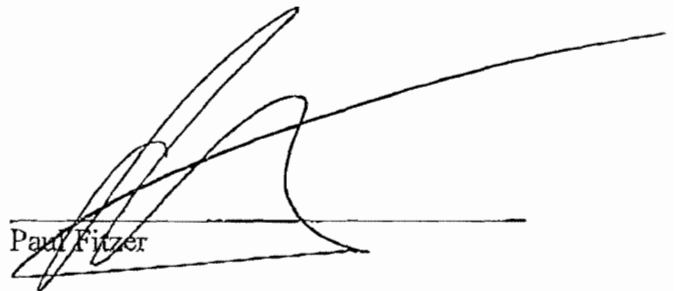
Method: Box

Phillip J. Collaer  
ANDERSON JULIAN & HULL, LLP  
P.O. Box 7426  
Boise, ID 83707

Method: Box

Hon. Robert Elgee  
Blaine County Courthouse (resident chambers)  
202 S. Second Ave. S, Suite 110  
Hailey, ID 83333

Method: Box

  
Paul Fitzer

CHRISTOPHER P. SIMMS  
Attorney at Law  
US Bank Bldg., Ste 209  
191 Sun Valley Road  
P.O. Box 3123  
Ketchum, ID 83340  
Tel: 208 622 7878  
Fax: 208 622 7129  
ISB# 7473

Attorney for Plaintiff

FILED  
10-28-08  
HR 11:25 AM.  
ROLLIE BENNETT  
CLERK OF THE DISTRICT COURT  
*Balder D. Walters*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN, )  
)  
Plaintiff, )  
)  
and )  
)  
MARTIN CUSTOM )  
HOMES, L.L.C., )  
)  
Plaintiff, )  
v. )  
)  
)  
CAMAS COUNTY, IDAHO, )  
By and through the duly elected )  
Board of Commissioners in )  
their official capacity, )  
)  
KEN BACKTROM, )  
BILL DAVIS, and )  
RON CHAPMAN, )  
)  
Defendants. )  
\_\_\_\_\_ )

Case No. CV-08-40

STIPULATION AS TO FACTS  
AND ADMISSION OF DOCUMENTARY  
EVIDENCE

STIPULATION AS TO FACTS AND ADMISSION OF DOCUMENTARY  
EVIDENCE



Comes now the parties hereto, through counsel, and hereby stipulate to admission of the following exhibits into evidence and the following facts for purposes of submission of the legal issues herein;

#### DOCUMENTARY EVIDENCE

A. The parties stipulate to the admission into evidence of each of the following Plaintiff's Exhibits

- Exhibit A – Published Notice of Planning and Zoning Commission Hearing on Zoning Ordinance and Comprehensive Plan, Camas Courier April 2, 2008, for hearing on April 21, 2008.
- Exhibit B – Published Notice of Board of County Commissioners Hearing on Zoning Ordinance and Comprehensive Plan, Camas Courier April 23, 2008, for hearing on May 12, 2008.
- Exhibit C Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Zoning Map.
- Exhibit D Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Zoning Ordinance
- Exhibit E Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Comprehensive Plan Map.

- Exhibit F Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Comprehensive Plan.
- Exhibit G – Publication of adoption on May 12, 2008 of Zoning Ordinance No. 157, and Zoning Map Ordinance No. 158 Board of County Commissioners Hearing published in the Camas Courier on May 14, 2008.
- Exhibit H – Decision on Requirements of a “Transcribable Verbatim Record” and Other Records for Purposes of Preliminary Injunction dated December 28, 2007 in Case No. CV-07-24.
- Exhibit I – Order Following Contempt Hearing and Order Expanding Preliminary Injunction dated March 11, 2008 in Case No. CV-07-24.
- Exhibit J – Decision on Conflicts of Interests issue for Purposes of Preliminary Injunction dated April 2, 2008 in Case No. CV-07-24.
- Exhibit K – Minutes of April 21, 2008 Planning and Zoning Public Hearing Minutes wherein Resolutions 114 and 115 and Ordinance 157 and 158 recommending adoption of an Amended Comprehensive Plan, Land Use Map, Zoning Ordinance and Zoning Designation Map.
- Exhibit L – Minutes of April 21, 2008 Board of County Commissioners Public Hearing Minutes.
- 

#### STIPULATION OF FACTS

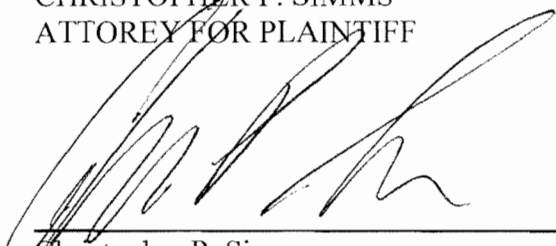
- B. The Planning and Zoning Commission nor the Board of Commissioners generated or considered new studies in adoption of the Comprehensive Plans of 2008.
- C. Legal Notice of Public Hearing, was posted at:
- a. Camas/Gooding County Line on US 46;
  - b. East and West Camas County Lines on US 20;
  - c. Camas County Annex;
  - d. Entry Road to West Magic Highway 75;
  - e. Soldier road from the North
- Notice was not posted at Fairfield City Hall.**
- D. At the Board of County Commissioner level Legal Notice of Public Hearing, pursuant to IC 67-6509, was purportedly mailed to all political subdivisions providing services within the planning area. Legal Notice of Public Hearing was not mailed <sup>to</sup> ~~by~~ the City of Fairfield. No written verification of notice exists for service to the West Magic Fire Protection District.
- E. Individual Legal descriptions of the various zoning designations on the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance and Zoning Designation Map were not considered in adoption of same nor published with the Ordinances.
- F. Publication of Zoning Ordinance 157 adopted May 12, 2008 did not include any legal descriptions. The publication provided: [t]he full text of Ordinance 157 is available for public inspection during normal office hours at the office of the Camas County Planning and Zoning Administrator.

- G. Publication of the Zoning Designation Map Ordinance No 158 adopted May 12, 2008 did not include any legal descriptions.
- H. Plaintiff owns in fee simple the following parcels of real property in Camas County as of May 12, 2008: a) 40+ acre parcel 770 E 240 N., b) 29 acre parcel west of Soldier Road and South of Baseline Road, c) lots 3 & 4 Blk 5 Homestead Subdivision, within an existing approved and platted subdivision of one acre lots.
- I. The above parcels of real property, in order were located within the named zoning district prior to and after the rezone process of 2006, 2007 & 2008 a) agricultural/ agricultural, b) agricultural/R1 c) AT/A5
- J. Plaintiff had a fee simple ownership interest in two (2) 80 acre parcels, in section 4, that were sold to third parties while retaining a contractual fiscal interest in the development, marketing, and building potential thereon. The north parcel, was zoned AT before and after the 2006, 2007 & 2008 rezone process. The southern parcel was rezoned from AG to R1 as a result of the 2006, 2007 & 2008 zoning amendment process.
- K. Plaintiff holds a first right of refusal as to a 67 acre parcel in Section 4 that was rezoned from AG to R1 as a result of the 2006, 2007 & 2008 zoning amendment process.
- L. The parcels generally described in the two preceding paragraphs, numbered and I and J, were included in the R-7 land use designation in the Comprehensive Plan Land Use Map existing prior to the 2006 Comprehensive

Plan Amendments and R-1 land use designation in the post 2006 Comprehensive Plan Land Use Map amendments.

- M. The 29 acre parcel described in paragraph H subparagraph b, was included in the R-7 land use designation in the Comprehensive Plan Land Use Map existing prior to the 2006 Comprehensive Plan Amendments and R-1 land use designation in the post 2006 Comprehensive Plan Land Use Map amendments.

CHRISTOPHER P. SIMMS  
ATTORNEY FOR PLAINTIFF



---

Christopher P. Simms

PAUL FITZER  
MOORE, SMITH, BUXTON & TURKE, ATTORNEYS FOR DEFENDANT



---

Paul Fitzer

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CAMAS**

GEORGE MARTIN and MARTIN  
CUSTOM HOMES, LLC,

Plaintiff,

vs.

CAMAS COUNTY, IDAHO, by and  
through the duly elected Board of  
Commissioners in their official  
capacities, KEN BACKSTROM, BILL  
DAVIS, and RON CHAPMAN,

Defendants.

Case No. CV-2008-40

**FILED**  
11-10-08  
HR 9:15 A.M.  
ROLLIE BENNETT  
CLERK OF THE DISTRICT COURT

**MEMORANDUM DECISION AND ORDER RE: APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND /OR PRELIMINARY INJUNCTION**

On October 24, 2008 the plaintiff's Application for a Temporary Restraining Order and /or a Preliminary Injunction came on regularly for hearing. Counsel, Christopher P. Simms appeared on behalf of the plaintiff (Martin). Counsel, Paul Fitzer appeared on behalf of the defendant (Board). After the court heard the testimony offered by the parties; the stipulated set of facts; and the arguments of counsel, counsel were given additional time to submit to the court audio recordings of proceedings before the Planning & Zoning Commission and the Board and upon receipt of such audio recordings, the matter would then be deemed under advisement for a

written decision. The audio recordings were received by the court on October 31, 2008 and the matter was deemed under advisement as of that date.

## **I.**

### **PROCEDURAL BACKGROUND**

The pending matter is before this court on the plaintiff's request for a preliminary injunction to enjoin the defendants' processing of land use applications under the provisions of Ordinance Nos. 114 (Comprehensive Plan), 115 (Land Use Map), 157 (Zoning Ordinance), and 158 (Zoning Designation Map) which were adopted by the Board on May 12, 2008.

Prior to the filing of this pending action, plaintiff had filed a similar action seeking to enjoin enforcement of a 2007 adoption by the Board of a Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Designation Map. *Martin v. Camas County*, CV-2007-24 (*Martin I*). This action is still pending and no final orders have been issued by the court.

## **II.**

### **TESTIMONY AND EXHIBITS**

**Testimony:** The court will summarize the testimony relevant for the purpose of the request for a preliminary injunction, as follows:

**GEORGE MARTIN** is the plaintiff in the above entitled matter and is a resident and property owner in Camas County. He currently owns real property in Camas County consisting of a: (1) 40 acre parcel located at 770 E. 240 N. which before and after the 2008 Ordinances is zoned Agricultural (1 unit per 80 acres); (2) 29 acre parcel west of Soldier Road which prior to the amendments was zoned Agricultural, with an R-7 (high density use) designation on the prior Land Use Map of the Comprehensive Plan and after the amendments was zoned R-1 (1 unit per acre); and (3) two one acre lots in the Homestead Subdivision which prior to the amendments

was zoned Agricultural Transitional and after the amendments was zoned R-1 (1 unit per acre).

Mr. Martin also has a contractual financial interest, but he is not the owner, in two 80 acre parcels and a right of first refusal to purchase an additional 58 acres. The north 80 acre parcel before and after the amendments was zoned Agricultural Transitional, and it was Mr. Martin who obtained the rezone for Agricultural Transitional from Agricultural prior to 2007. The south 80 acre parcel before the amendments was zoned Agricultural (although it had an R-7 designation on the Land Use Map) and after the amendments it was zoned R-1 (1 unit per acre). Mr. Martin testified that on April 17, 2007 he filed Application to rezone the two 80 acre parcels to R-7. The following day the County adopted the 2007 Zoning Ordinance which is the subject of *Martin I*. The processing of his application for the R-7 rezone was enjoined in *Martin I*.

Mr. Martin is a licensed real estate agent and a developer. Mr. Martin admits that as a result of the adoption of the 2008 Ordinances that his property was the subject of up zoning or no change in its zoning designation. His property was not the subject of any down zoning, although he lost the R-7 designation on the Land Use Map for his property that had such a previous designation.

According to Mr. Martin the Board's process of changes to the Comprehensive Plan and Zoning Ordinance between 2005 and 2008 reduced the value of the property that he owned or had a financial interest in based on what he described as supply and demand. He opined that he had very unique property that was designated on the comprehensive plan land use map as R-7 or where high density growth was desired and by reason of the of the Board's actions they rezoned over 20,000 acres in the county to what he described as higher density residential and that putting that much inventory on the market reduced his property's value. He admits that there was no property before or after 2007 that was zoned R-7.



It was in March of 2008 that he learned through a notice and posting that Camas County was considering adopting a new resolution to adopt a new comprehensive plan, land use map, zoning ordinance and zoning designation map. He attempted to obtain from the P&Z Administrator through public record requests copies of the drafts of what was being proposed but was denied copies of the documents. He went to three public meetings noticed by the planning and zoning commission concerning the proposed plan, maps and or zoning ordinance. In his opinion very little was discussed at these meeting relative to the proposed plan, maps and ordinance, although minor changes had been made to what was proposed and adopted in 2007.

In his assessment there was little to no discussion or deliberation as to whether the zoning designation map was in accordance with the comprehensive plan; the effect the zoning designation map would have on schools; impact on other public services; impact on water quality.

Mr. Martin admits that he attended and testified at all of the public meetings and hearings relative to those proceedings leading up to the 2007 and 2008 adoption of the new comprehensive plan, maps and zoning ordinances.

Mr. Martin estimates that there are approximately 10 land use applications pending under the 2008 ordinance. He did not testify that he has filed any land use applications under the 2008 ordinance.

**DWIGHT BUTLIN** is the Planning and Zoning Administrator for Camas County. It is his duty to review land use applications; prepare staff reports; provide information to the planning and zoning commission; attend meetings of the planning and zoning commission; and attend Board meetings when planning and zoning issues are on the agenda.

He participated in the public meetings and public hearings relative to the adoption of the

2008 comprehensive plan and zoning ordinance, as well as the associated maps.

Prior to 2007 there was some land which was designated as R-7 (seven units per acre) on the land use map component of the preexisting comprehensive plan. However, there was no land that had a zoning map designation of R-7 prior to 2007. The County had been considering the adoption of a new zoning ordinance and comprehensive plan for approximately 2 to 3 years. Prior to the adoption of the 2008 plan and ordinance, the planning and zoning commission had held 3 public meetings where the proposed ordinance and plan was discussed in terms of recommendations to be made to the Board and that staff went through the elements of section 67-6508. He claims that the P&Z commission did go through the elements of I.C. § 67-6508 and some changes were made as compared to the 2007 plan and ordinance.

According to Mr. Butlin, the plaintiff Mr. Martin attended all of the meetings relative to the adoption of the 2008 comprehensive plan and zoning ordinance.

He admits that the materials relative to the 2008 comprehensive plan and zoning ordinance were not mailed to the City of Fairfield and the West Magic Fire District. He did post notices of the public hearings before the Board at the external boundaries of the county. He was responsible for preparing and submitting the published notices and summary for the ordinances and plan to the Camas County Courier.

**Exhibits:** The plaintiff and the defendant stipulated to the admission of their respective exhibits consisting of Plaintiff's Exhibits A through M and Defendant's Exhibits 1 through 17. The parties also submitted to the court various audio recordings in a CD format for the court's listening and consideration. The court has listened to the audio recordings, however, they are not particularly helpful without additional foundation to establish when the meetings were conducted; who was in attendance and participated; whether the meetings were of an informal

nature; or a public meeting; or a public hearing. The recordings are not of particular assistance to the court in addressing the issues to be decided relative to a request for a preliminary injunction.

### III.

#### STANDARD

The determination as to whether a preliminary injunction should issue is a matter of discretion for the trial court. *Harris v. Cassia County*, 106 Idaho 513, 681 P.2d 988 (1984). As such, this court must act within the outer bounds of its discretion thru an exercise of reason. A preliminary injunction "is granted only in extreme cases where the right is very clear and it appears that irreparable injury will flow from its refusal." *Id.* at 518, 681 P.2d at 993 (citing *Evans v. District Court of the Fifth Judicial Dist.*, 47 Idaho 267, 270, 275 P. 99, 100 (1929)). See also *Brady v. City of Homedale*, 130 Idaho 569, 572, 944 P.2d 740, 707 (1997). District courts are required to issue injunctions only where irreparable injury is actually threatened. *O'Boskey v. First Fed. Sav. & Loan Ass'n of Boise*, 112 Idaho 1002, 1007, 739 P.2d 301, 306 (1987). Further it is the party that seeks injunctive relief that bears the burden of proving a right to such relief. *Lawrence Warehouse Co. v. Radio Lumber Co.*, 89 Idaho 389, 405 P.2d 634 (1965).

Therefore, the plaintiffs herein have the burden of proof to establish the grounds for the issuance of a preliminary injunction as set forth in I.R.C.P. Rule 65(e) which provides in relevant part as follows:

#### (e) Grounds for Preliminary Injunction.

A preliminary injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.

(3) When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

Therefore, in order to grant a preliminary injunction, this court must find that the plaintiff is entitled to the relief that he seeks and that absent the granting of the preliminary injunction the plaintiff will suffer irreparable injury.

#### IV.

#### STIPULATED FACTS

The parties in separate stipulations of fact have stipulated as follows:

Stipulation of Facts submitted by Defendants:

1. Plaintiff owns the following parcels of property in Camas county:
  - 1) Property: forty acre parcel at 770 e. 240 N.
    - a. Prior to the 2007 amendments, the property was zoned Agricultural (A) allowing one unit per twenty acres;
    - b. After the amendments, including 2008, the property was zoned Agricultural (A).
    - c. Prior to the 2006 Comprehensive Plan Land Use Map amendments, the property was designated A-T, but A after the amendments.
  - 2) Property: twenty-nine acre parcel west of Soldier road.
    - a. Prior to the 2007 amendments, the property was Agricultural (A);
    - b. After the 2007 amendments, the property was zones Residential (R1), allowing one unit per acre.
    - c. Prior to the 2006 Comprehensive Plan Land Use Map amendments, the property was designated R-7, but R-1 after the amendments.
  - 3) Property: one, one acre lot within the existing, approved, and platted Homestead Subdivision.
    - a. Prior to the 2007 amendments, the properties were zones Agricultural Transitional (AT) allowing one unit per acre;
    - b. Prior to the 2008 amendments, the property was A-5, allowing one unit per five acres.

c. After the 2008 amendments, the property was zoned Residential (R1), allowing one unit per acre.

2. The Commission held several public meetings to discuss the new ordinances and resolutions; 9. Notice of Public Hearing before the Planning and Zoning Commission on the draft 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map were published in the April 2, April 9, and April 16, 2008 editions to the Camas Courier.

3. Pursuant to Idaho 67-6511(b), notices were posted at:
- a. Camas/Gooding County Line on US 46;
  - b. East and West Camas County Lines on US 20;
  - c. Camas County Annex;
  - d. Entry Road to West Magic Highway 75;
  - e. Soldier Road from the North

Notice was not posted at Fairfield City Hall.

4. Notice of the intent to amend the proposed legislation along with copies of the proposed legislation was mailed, on March 14, 2008, to the political subdivisions providing services within the planning jurisdiction, including:

- a. Camas County Weed Management
- b. Camas Soil Conservation District
- c. Camas County Road and Bridge
- d. Idaho Department of Fish and Game
- e. Camas County Sheriff
- f. Camas County School District
- g. Frontier Telephone
- h. Camas County Fire Marshall
- i. Idaho Power
- j. Forsgren Associates, Inc.
- k. South Central Health Department
- l. Camas County Engineer at Galena Engineers.

5. The Commission held public hearings on the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map on April 21, 2008.

6. All members, except one (Celia), of the Planning and Zoning Commission recused themselves on the record and did not vote to recommend approval of said zoning Map.

7. The Commission allowed all interested persons to provide testimony.

8. Plaintiff testified at all public hearings.

9. The public hearing was closed at the conclusion of the April 21 public hearing. The Commission then took up the matter and rendered its recommendation to forward the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map to the Board for

consideration and approval.

10. The Commission forwarded its written recommendation to the Board which was received in a Board meeting on April 22, 2008.

11. The members of the Board that owned property in the County recused themselves on the record and did not vote to adopt the proposed zoning map.

12. Notice of Public Hearing before the Camas County Board of County Commissioners on the draft 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map were published in the April 23, April 30, and May 7, 2008 editions to the Camas County Courier.

13. On May 12, 2008, the Board conducted public hearings on the proposed legislation taking public and written testimony. Plaintiff testified at all public hearings. The public hearing was closed on May 12, 2008 at the conclusion of testimony. The Board then took up the matter and rendered its decision.

14. By Resolution 114 and 115 the County adopted the Comprehensive Plan and Land Use Map. By Ordinance 157 and 159, the County adopted the Zoning Ordinance and Map.

15. The Planning and Zoning Commission nor the Board of Commissioners generated or conducted new studies in the adoption of the 2008 Comprehensive Plan.

Stipulation of Facts submitted by Plaintiff:

B. The Planning and Zoning Commission nor the Board of Commissioners generated or considered new studies in adoption of the Comprehensive Plans of 2008.

C. Legal Notice of Public Hearing was posted at:

- a. Camas/Gooding County Line on US 46;
- b. East and West Camas County Lines on US 20;
- c. Camas County Annex;
- d. Entry Road to West Magic Highway 75;
- e. Soldier Road from the North

Notice was not posted at Fairfield City Hall.

D. At the Board of County Commissioner level Legal Notice of Public Hearing, pursuant to I.C. 67-6509, was purportedly mailed to all political subdivisions providing services within the planning area. Legal Notice of Public Hearing was not mailed to the City of Fairfield. No written verification of notice exists fro service to the West Magic Fire Protection District.

- E. Individual Legal descriptions of the various zoning designations on the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Designation Map were not considered in adoption of the same nor published with the Ordinances.
- F. Publication of Zoning Ordinance 157 adopted May 12, 2008 did not include any legal descriptions. The publication provided: [t]he full text of Ordinance 157 is available for public inspection during normal office hours at the office of the Camas County Planning and Zoning Administrator.
- G. Publication of the Zoning Designation Map Ordinance No 158 adopted May 12, 2008 did not include any legal descriptions.
- H. Plaintiff owns in fee simple the following parcels of real property in Camas County as of May 12, 2008: (a) 40+ acre parcel 770 E 240 N; (b) 29 acre parcel west of Soldier Road and south of Baseline Road; (c) lots 2 & 4 Blk 5 Homestead Subdivision, within an exiting approved and platted subdivision of one acre lots.
- I. The above parcels of real property, in order, were located within the named zoning district prior to and after the rezone process of 2006, 2007, & 2008: (a) agricultural/agricultural; (b) agricultural/R1; (c) AT/A5.
- J. Plaintiff had a fee simple ownership interest in two (2) 80 acre parcels, in section 4, that were sold to third parties while retaining a contractual fiscal interest in the development, marketing, and building potential thereon. The north parcel was zoned AT before and after the 2006, 2007, & 2008 rezone process. The southern parcel was rezoned from AG to R1 as a result of the 2006, 2007, & 2008 zoning amendment process.
- K. Plaintiff holds a first right of refusal as to a 67 acre parcel in Section 4 that was rezoned from Ag to R1 as a result of the 2006, 2007, & 2008 zoning amendment process.
- L. The parcels generally described in the two preceding paragraphs, numbered I and J, were included in the R-7 land use designation in the in the Comprehensive Plan Land Use Map existing prior to the 2006 Comprehensive Plan Amendments and R-1 land use designation in the post 2006 Comprehensive Plan Land Use Map amendments.
- M. The 29 acre parcel described in paragraph H subparagraph (b) was included in the R-7 land use designation in the Comprehensive Plan Land Use Map existing prior to the 2006 Comprehensive Plan Amendments and R-1 land use designation in the post 2006 Comprehensive Plan Land Use Map amendments.

## V.

## ANALYSIS

The only issue for this court to determine presently is whether the plaintiff is entitled to a

preliminary injunction. It is the burden of the plaintiff to establish a likelihood of prevailing on the merits and that he has suffered or will suffer irreparable injury if the injunctive relief is not granted.

**A. Irreparable Injury.**

The essence of the plaintiff's claimed injury is that some of his property has lost its R-7 (high density development) designation of the Land Use Map of the Comprehensive Plan that had been in existence prior to the adoption of the 2007 and/or 2008 comprehensive plans and zoning ordinances and that by permitting the R-1 development his property has been reduced in value as a result of what he characterizes as added inventory. Prior to the adoption of the 2007 and 2008 plans and ordinances the plaintiff had filed applications seeking to rezone his property to R-7 that had such a designation on the comprehensive plan land use map. The adoption of such plans and ordinances after the filing of his applications for rezone would not have precluded him from going forward with his applications since it would be the comprehensive plan and zoning ordinance in effect at the time the application was filed that would have governed. *Chisholm v. Twin Falls County*, 139 Idaho 131, 134-135, 75 P.3d 185, 188-189 (2003). "The rationale for this rule is that permitting a [governing board] to apply an amendment to a previously filed application would allow a [governing board] to withhold action on a permit, amend its ordinances to defeat the application, and thereby give effect to an amended ordinance before it exists." *Foster v. City of St. Anthony*, 122 Idaho 883, 887, 841 P.2d 416, 417 (1992).

The plaintiff further asserts in his pleadings that "the economic damage to plaintiff is irreparable because once a subdivision is approved under the illegally adopted Comprehensive Plan and Zoning Ordinance the owner of the subdivision will have obtained a property right thereto." (Statement in Support of Proposed Temporary Restraining Order, ¶ 4.). The court



would note that the 2008 adoption of the Plan and Ordinance at issue occurred on May 12, 2008, that the plaintiff has waited approximately 5 months in his legal challenge to the adoption of the Plan and Ordinance, and that the plaintiff acknowledges that citizens of Camas County have land use applications pending. The court would also note that the designation of R-7 land use on the Land Use Map as part of a comprehensive plan did not create a property right for the plaintiff. *Giltner v. Jerome County*, 145 Idaho 630, 181 P.3d 1238 (2008). There is no evidence as to what is being sought in any of the pending land use applications. There is no direct showing as to how the granting of the pending land use applications would cause direct injury to Martin or the property that he may have a financial interest in other than speculation that the approval of such pending applications might cause a loss of value in his property.

The plaintiff has not yet sought to process a land use application under the provisions of the newly adopted ordinance or plan nor has he been denied a land use application under the new ordinance or plan. There is no evidence that the plaintiff has sought to challenge any of the alleged pending land use applications that were said to have been filed under the new ordinance and plan. There is no doubt that the denial of a property right can result in irreparable injury and can be the basis of a preliminary injunction. *Olsen v. Bedke*, 97 Idaho 825, 55 P.2d 156 (1976). There is no evidence that the plaintiff herein has been denied a property right and the evidence suggest that his property, which he owns or has an interest in, either has been up zoned or has had no change in its previous zoning designation. Further, Martin testified to having filed a rezone application prior to the adoption of the 2007 ordinance and plan and therefore his rezone application would be processed under the zoning ordinance and comprehensive plan that was in existence prior to the adoption of either the 2007 or 2008 ordinances. The court in *Giltner* cited with approval to the memorandum opinion of the district court in *Balser v. Kootenai County BD*.

of *Comm'rs*, 110 Idaho 37, 38, 714 P.2d 6, 7 n.1(1986) wherein it was observed that "...Planning has a speculative impact upon property values, while zoning may actually constitute a valuable property right." Therefore, while an R-7 zoning designation may have been a valuable property right, if Mr. Martin's property had been zoned such, an R-7 land use designation as part of the comprehensive plan would only be speculative in terms of value. Both our courts and federal courts have consistently held that "[A] zoning ordinance which downgrades the economic value of property does not constitute a taking of property without compensation in violation of the United States Constitution, at least where,... some residual value remains in the property." *Daley v. Blaine County*, 108 Idaho 614, 617, 701 P.2d 234, 237 (1985) (citing *County of Ada v. Henry*, 105 Idaho 263, 266, 668 P.2d 994, 997 (1983)). Also see, *Covington v. Jefferson County*, 137 Idaho 777, 53 P.3d 828 (2002).

While there is testimony that other property owners have filed land use applications under the new ordinance there is no showing as to how these applications if granted may adversely affect the plaintiff. There is nothing in the record that would preclude the plaintiff from pursuing his 2007 rezone application but for the injunction pending in *Martin I* or from pursuing a land use application under the 2008 zoning ordinance.

The court would note that the issue of irreparable injury for a preliminary injunction is comparable to the issue of standing to bring a declaratory judgment action.

"A person wishing to invoke a court's jurisdiction must have standing to raise the issue to be litigated. ... It is not enough that the party is a concerned citizen who seeks to ensure that a governmental entity abides by the law. *Thomson v. City of Lewiston*, 137 Idaho 473, 50 P.3d 488 (2002). To have standing, a litigant must allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury..... A citizen or taxpayer may not challenge a governmental enactment where the injury is one suffered alike by all citizens and taxpayers of the jurisdiction. .."

*Ameritel Inns, Inc. v. Greater Boise Auditorium District*, 141 Idaho 849, 852, 119 P.3d 624, 627 (2005)

Based on the foregoing the court must conclude that the plaintiff has not shown to have suffered or that he will suffer irreparable injury if this court does not enjoin the enforcement of the existing land use ordinances, plan and maps.

**B. Likelihood of prevailing on the merits.**

As indicated above a preliminary injunction is to only be granted “in extreme cases where the right is very clear.” *Brady v. City of Homedale*, 130 Idaho 569, 944 P.2d 704 (1997). The plaintiff’s action is a declaratory judgment action in which the plaintiff seeks to have this court find that the Board’s adoption of the new 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance and Zoning Designation Map are void based on alleged procedural and substantive irregularities in their adoption.

In addition, Martin would have this court conclude that the Board’s adoption of the 2008 zoning ordinance and comprehensive plan is in violation of the prior orders entered in *Martin I*. This court declines to address such allegations as a basis for injunctive relief. It is clear that as of the date of this decision there are no final orders in *Martin I*; since that action is still pending, the alleged violation of any interlocutory orders entered in *Martin I* is a matter best left to the presiding judge in *Martin I* and not this court since it could lead to inconsistent findings, orders or judgments. Therefore, any claims that the Board acted in derogation of the interlocutory orders in *Martin I* will not be considered by this court.

Since the court has determined that Martin has not carried his burden in showing that he has or will suffer irreparable injury, the court need not address the likelihood of success on the merits. However, it may be of benefit to the parties to address some of the issues that go to the

merit of the plaintiff's claims, and why this court can find that the record does not presently support a finding of a likelihood of success on the merits.

**1. Legislative activity v. Quasi-judicial activity.**

The parties are in disagreement as to whether the approval of the 2008 comprehensive plan, maps and zoning ordinance together with the repeal of the prior plan and ordinances was legislative activity or quasi-judicial activity.

**a. QUASI-JUDICIAL ACTIVITY**

Quasi-judicial activity concerns zoning decisions of governing bodies which apply its general rules to "specific individuals, interests or situations" and as such the governing body must maintain a transcribeable record and make proper findings and conclusions for effective judicial review. *Cowan*, Idaho at 511, P.3d at 1257. Further zoning decisions are only subject to judicial review provided there is a statute other than IAPA that authorizes judicial review. *Giltner v. Jerome County*, 145 Idaho 630, 181 P.3d 1238 (2008). Lastly, generally speaking the statutes which authorize judicial review of quasi-judicial zoning decisions place time limits on the filing of a petition for judicial review. I.C. §§ 67-6519; 67-6521. In such cases the time limit is 28 days after the exhaustion of all administrative remedies. In *Friends of Farm to Market*, the Court noted that "due process applies to quasi judicial proceedings like those conducted by zoning boards, and such due process requires notice of the proceedings, specific written findings of fact, and an opportunity to be present and rebut evidence." 137 Idaho at 198, 46 P.3d at 15; see also, I.C. §§ 67-6534 – 67-6535. However, Idaho Code section 67-5279 under the I.A.P.A., assuming a LLUPA statue authorizes judicial review, requires that, "[n]otwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced." I.C. § 67-5279(4).

If in fact the actions of the Board were quasi-judicial, they would have been subject to judicial review under the statutes authorizing such judicial review. The plaintiff's action would be time barred since it was not filed within 28 days of the exhaustion of the administrative remedies; alternatively the plaintiff has not shown a substantial right having been prejudiced.

**b. LEGISLATIVE ACTIVITY**

A legislative act is not subject to judicial review but may be subject to collateral attack in a declaratory judgment action. *Scott v. Gooding County*, 137 Idaho 206, 46 P.3d 24 (2002); *McCuskey v. Canyon County*, 123 Idaho 657, 851 P.2d 953 (1993); *Jerome County v. Holloway*, 118 Idaho 681, 799 P.2d 969 (1990); *Burt v. City of Idaho Falls*, 105 Idaho 65, 665 P.2d 1075 (1983); *Cooper v. Board of County Com'rs. Of Ada County*, 101 Idaho 407, 614 P.2d 947 (1980). The court in *Cooper* held that the "promulgation or enactment of general zoning plans and ordinances is legislative action", while an "application for rezone of specific property" was a quasi-judicial determination. *Cooper*, 101 Idaho at 409, 614 P.2d at 949. In *Cowan v. Board of Com'rs. Of Fremont County*, 143 Idaho 501, 509, 148 P.3d 1247, 1255 (2006), the court observed that "... 'Legislative activity ... is differentiated from quasi-judicial activity by the result--legislative activity produces a rule or policy which has application to an open class whereas quasi-judicial activity impacts specific individuals, interests or situations.' *Burt v. City of Idaho Falls*, 105 Idaho 65, 67, 665 P.2d 1075, 1077 (1983).

"Action is legislative when it affects a large area consisting of many parcels of property in disparate ownership. . . . Conversely, action is considered quasi-judicial when it applies a general rule to a specific interest, such as a zoning change affecting a single piece of property, a variance, or a conditional use permit." *Allison v. Washington County*, 24 Or. App. 571, 548 P.2d 188, 190-91 (Or. App. 1976) (footnotes omitted).

*Burt v. City of Idaho Falls*, 105 Idaho at 67, 665 P.2d at 1077, FN.4.

While legislative actions by counties are subject to collateral actions such as declaratory judgments, they cannot be attacked by a petition for judicial review. *Scott v. Gooding County*, 137 Idaho 206, 208, 46 P.3d 23, 25 (2002).

When one seeks to challenge legislative action, the court will not disturb the legislative action unless there is a “clear showing that it is confiscatory, arbitrary, unreasonable or capricious.” *Burt v. City of Idaho Falls*, 105 Idaho at 66, 665 P.2d at 1076, FN.2. Legislative action is “capricious if it is done without a rational basis” and “arbitrary if it was done in disregard of the facts and circumstances presented or without adequate determining principles.” *American Lung Ass’n, etc. v. State, Dep’t of Agriculture*, 142 Idaho 544, 547, 130 P.3d 1082, 1085 (2006). However, “It is a well settled principle that notice and hearing requirements in zoning enabling acts are conditions precedent to the proper exercise of the zoning authority. (citations omitted).” *Jerome County v. Holloway*, 118 Idaho 681, 684, 799 P.2d 969, 972 (1990).

The Local Land Use Planning Act establishes the procedures for the adoption, repeal or amendment of a county’s comprehensive plan and /or zoning ordinance. In *Gumprecht v. City of Coeur d’ Alene*, 104 Idaho 615, 617, 661 P.2d 1214, 1216 (1983) the court summarized the procedure to be followed for the adoption or amendment of a comprehensive plan or zoning ordinance, as follows:

The Local Planning Act establishes explicit and express procedures to be followed by the governing boards or commissions when considering, enacting and amending zoning plans and ordinances. The acts and procedures required by the Act include: holding advisory and informational meetings and hearings in developing plans and zoning structures, I.C. § 67-6507; conducting a comprehensive planning process to prepare, implement and update the comprehensive plan, which is to be based upon specific delineated components, see I.C. § 67-6508; and, giving notice to interested parties and holding public hearings prior to the recommendation, adoption or amendment of a plan or zoning ordinance, I.C. § 67-6509 and I.C. § 67-6511.

Therefore, **aside from the issue of standing**, the plaintiff would have to prove that the Board either (1) failed to comply with the notice and hearing requirements of I.C. §§ 67-6509 & 67-6511 or (2) that the County acted arbitrarily or capriciously in its repeal of the prior plan and ordinance and its adoption of the 2008 plan and ordinance. The evidence in the record does suggest compliance with notice and hearing requirements and the evidence in the record is inadequate to conclude that the actions of the Board were arbitrary or capricious.

## **2. Standing.**

To have standing to challenge legislative action in a declaratory judgment action the plaintiff would have to make an adequate showing of a “distinct palpable injury” to himself and a “ ‘fairly traceable’ causal connection between the claimed injury and the challenged conduct.” *Rural Kootenai Org., Inc. v. Board of Com’rs*, 133 Idaho 833, 841, 993 P.2d 596, 604 (1999). Thus far such a showing has not been made based on the court’s analysis in section A., above. See, *Ameritel Inns, Inc. v. Greater Boise Auditorium District*, 141 Idaho 849, 852, 119 P.3d 624, 627 (2005).

For example, in *McCuskey v. Canyon County*, 123 Idaho 657, 851 P.2d 953 (1993), Mr. McCuskey had sought and was issued a building permit to erect a gas station and convenience store. Subsequently the planning and zoning department issued a stop work order based on the fact that the adoption of a new comprehensive plan and zoning ordinance in 1979 that replaced the 1965 comprehensive plan and zoning ordinance prohibited the proposed use of Mr. McCuskey’s property. As a result Mr. McCuskey filed a declaratory judgment action which challenged the adoption of the 1979 comprehensive plan and ordinance on the basis that the Board had not complied with the notice provisions of I.C. § 67-6511(b). It is clear that McCuskey

was injured by reason of the issuance of the stop work order and that such injury was in fact connected to the adoption of the 1979 comprehensive plan and zoning ordinance.

The plaintiff thus far has failed to make a sufficient showing of direct injury to himself as a result of the enactment of the 2008 comprehensive plan and zoning ordinance.

**3. Conflict of Interest.**

It would appear from the record before this court that planning and zoning commissioners and Board members that may have had a conflict of interest pursuant to § 67-6506 recused themselves from the proceedings being challenged by the plaintiff. It would appear that those who disqualified themselves may be consistent with the holding in *Gooding County v. Wybenga*, 137 Idaho 201, 205, 46 P.3d 18, 22 (2002), although the record is insufficient to make a conclusive determination at this stage of the proceeding.

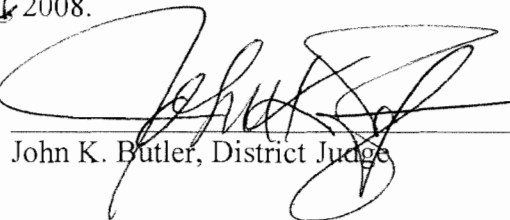
**IV.**

**CONCLUSION AND ORDER**

For the reasons set forth above, the plaintiff's application for a preliminary injunction is DENIED. The parties are hereby directed to submit their unavailable dates for trial and the court will schedule the matter for a court trial at its earliest opportunity.

IT IS SO ORDERED.

DATED this 7 day of November 2008.

  
\_\_\_\_\_  
John K. Butler, District Judge

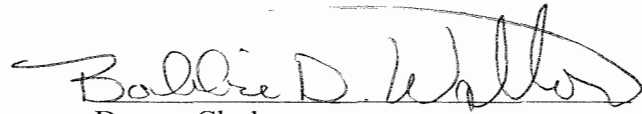


CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 10 day of Nov, 2008, a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER RE: APPLICATION FOR TEMPORARY RESTRAINING ORDER AND /OR PRELIMINARY INJUNCTION was mailed, postage paid, and/or hand-delivered to the following persons:

Christopher P. Simms  
Attorney at Law  
P.O. Box 3123  
Ketchum, Idaho 83340

Paul Fitzer  
Attorney at Law  
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Suite 520  
Boise, Idaho 83702

  
Deputy Clerk

Paul Fitzer, ISB No. 5675  
MOORE SMITH BUXTON & TURCKE, CHTD.  
950 W. Bannock St., Suite 520  
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FILED  
2-13-09  
HR 1:40 P.M.  
ROLLIE BENNETT  
CLERK OF THE DISTRICT COURT  
*Babette D. Waller*

*Attorneys for Defendants Camas County and the Individual Commissioners*

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR CAMAS COUNTY**

GEORGE MARTIN and MARTIN CUSTOM  
HOMES, LLC,

Plaintiffs,

v.

CAMAS COUNTY, IDAHO, by and through the  
duly elected Board of Commissioners in their  
official capacity, KEN BACKSTROM,  
BILL DAVIS, and RON CHAPMAN,

Defendants.

Case No. CV-2008-40

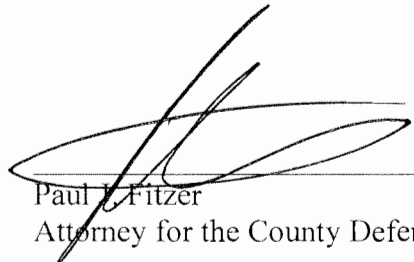
**MOTION FOR  
SUMMARY JUDGMENT**

COMES NOW, Camas County, Idaho (the County), by and through its duly elected Board of County Commissioners (the Board), Ken Backstrom, Bill Davis, and Ron Chapman (the Individual Commissioners), (collectively, County Defendants), by and through their attorneys of record, Moore Smith Buxton & Turcke, Chartered, and hereby moves the Court, pursuant to Rule 56 of the Idaho Rules of Civil Procedure, for summary judgment. This motion

is based upon the records, files, and pleadings in this action, the arguments and information contained in the Defendant's Memorandum in Support of Plaintiff's Motion for Summary Judgment, the Affidavits of Ken Backstrom and Dwight Butlin in Support of Defendant's Motion for Summary Judgment, and the attached exhibits, all of which have been filed with this motion.

Dated this 11<sup>th</sup> day of February, 2009.

MOORE SMITH BUXTON & TURCKE, CHTD.



Paul J. Fitzer  
Attorney for the County Defendants

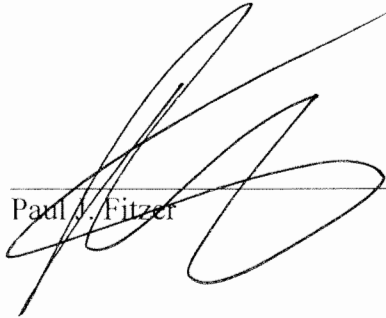
\* \* \*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Defendant's Motion for Summary Judgment was this 11<sup>th</sup> day of February, 2009 served upon the following individuals and in the corresponding manner:

Christopher P. Simms  
Attorney at Law  
U.S. Bank Bldg., Suite 209  
191 Sun Valley Road  
P.O. Box 3123  
Ketchum, Idaho 83340

☒ via U.S. Mail  
☐ via Hand Delivery  
☐ via Overnight Delivery

  
\_\_\_\_\_  
Paul J. Fitzer

Paul Fitzer, ISB No. 5675  
MOORE SMITH BUXTON & TURCKE, CHTD.  
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FILED  
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HR 1:40 P.M.  
ROLLE BENNETT  
CLERK OF THE DISTRICT COURT  
*Baller B. Waller*

*Attorneys for Defendants Camas County and the Individual Commissioners*

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR CAMAS COUNTY**

GEORGE MARTIN and MARTIN CUSTOM )  
HOMES, LLC, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
CAMAS COUNTY, IDAHO, by )  
and through the duly elected Board of )  
Commissioners in their official capacity, )  
KEN BACKSTROM, BILL DAVIS, and RON )  
CHAPMAN, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. CV-2008-40

MEMORANDUM IN SUPPORT  
OF DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

Defendant, Camas County, Idaho (the County), by and through its duly elected Board of County Commissioners (the Board), Ken Backstrom, Bill Davis, and Ron Chapman (the Individual Commissioners), (collectively, County Defendants), by and through their attorneys of record, Moore Smith Buxton & Turcke, Chartered, submits the following Memorandum in

Support of Defendant's Motion for Summary Judgment. This Memorandum is supported by the Exhibits attached hereto, and the Affidavits of Ken Backstrom and Dwight Butlin all filed contemporaneously herewith.

### **STATEMENT OF MATERIAL FACTS**

1. Beginning in 2005, Camas County ("County") began a comprehensive planning and zoning process with the ultimate goal to adopt a new comprehensive plan, land use map, zoning ordinance, and zoning map. For two years prior to adopting said legislation, the County conducted numerous citizen meetings, workshops, informational sessions, public meetings, and ultimately public hearings. The County heard from countless public citizens, governmental agency representatives, public interests groups, and other experts. (See Affidavit of Ken Backstrom ¶1, 9) As to the comprehensive plan text itself, the County made many textual refinements but did not feel that the entire text needed to be updated. In 1997, the County hired experts to assist the County in drafting its comprehensive plan which included maps, charts, statistics, and other valuable information that were still viable. Determining that it was unnecessary and cost prohibitive to conduct numerous additional studies, the County was satisfied with the plan which contained all of the required planning components. (See Backstrom, ¶6)

2. The rationale for adopting a new comprehensive plan and zoning ordinance was to protect the health, safety, and welfare of the citizens of Camas County from unbridled and

unplanned growth. Prior thereto, unless an individual applicant had specifically rezoned a particular parcel of property, the entire county was zoned Agricultural. The prior comprehensive plan, adopted in 1997, including its land use map unfortunately designated entire areas of the county as Agricultural Transitional (“AT”), which allowed one unit per acre. Between August, 2001 and November, 2005 approximately thirty-five rezones were passed rezoning properties from (A) to (AT). A total of 2001 acres was rezoned from (A) to (AT) between March and November of 2005 alone. If the trend of rezones continued, potentially 92,000 acres of valuable farm land was at risk of being rezoned from (A) to (AT). While the County was not compelled to grant these rezones pursuant to the comprehensive plan, it aptly demonstrated the necessity of revising the county’s legislation in order to limit development in agricultural areas and focus density in areas traditionally residential or commercial in character. (See Backstrom, ¶5-8, 15)

3. The Board of Commissioners ultimately adopted Resolution 96 (Comprehensive Plan) on or about May 25, 2006, Resolution 103 (Comprehensive Plan and Land Use Map) on March 29, 2007, and Ordinance 153 (Zoning Ordinance) Ordinance 150 (Zoning Map) on or about April 18, 2007. (See Backstrom, ¶9)

4. On or about May 4, 2007, Plaintiff brought a declarative judgment action in CV-2007-24 against the County seeking the permanent injunction of Ordinance 150 (Zoning Map), Ordinance 153 (Zoning Ordinance), Resolution 96 (Comprehensive Plan), and Resolution 103 (Land Use Map). Also, Plaintiff sought the preliminary injunction of the County’s legislation seeking to enjoin the County from processing any land use applications. (See Backstrom, ¶10)

5. The District Court of Camas County in Case No. 07-24 issued a preliminary injunction on March 7, 2008 enjoining the County from processing any land use applications pursuant to Ordinance 12, 150, and 153 based upon its finding that the County failed to maintain a transcribable record pursuant to §67-6536, failed to maintain findings of fact, conclusions of law pursuant to §67-6536 and 6509, violated §67-6506 for certain board and commission members' conflict of interest, and other alleged procedural errors. The Court held that a county-wide zoning ordinance and map were quasi-judicial in nature subjecting it to LLUPA's judicial review provisions and further determined that all Commission and Board members that owned property in the County had a conflict of interest by virtue of this ownership of property. The Court specifically stated on the record that the County was entitled to draft new legislation. (See Affidavit of Dwight Butlin ¶7)

6. In the weeks leading up to the public hearing, the Commission held several noticed, posted public meetings to discuss the new ordinances and resolutions; the drafts of which had been prepared by the planning staff.

7. Notice of Public Hearing before the Planning and Zoning Commission on the draft 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map were published in the April 2, April 9, and April 16, 2008 editions to the Camas Courier. (See Exhibit B). The legal publications included map inserts of both the proposed zoning map and land use map. (See Exhibit C). The legal notices were at least four inches by two columns in size and included a general summary of the provisions of the zoning ordinance and comprehensive plan. Notices



were site posted at all external boundaries of the site to wit: county lines and all other required locations pursuant to Idaho Code §67-6511(b)<sup>1</sup>:

- a. Camas/Gooding County Line on US 46;
- b. East and West Camas County Lines on US 20;
- c. Camas County Annex;
- d. Entry Road to West Magic Highway 75;
- e. Soldier road from the North

(See Butlin ¶10).

8. Notice of the intent to amend the proposed legislation along with copies of the proposed legislation was mailed, on March 14, 2008, to all political subdivisions providing services within the planning jurisdiction including:

- a. Camas County Weed Management
- b. Camas Soil Conservation District
- c. Camas County Road and Bridge
- d. Idaho Department of Fish and Game
- e. Camas County Sheriff
- f. Camas County School District
- g. Frontier Telephone
- h. Camas County Fire Marshall
- i. Idaho Power
- j. Forsgren Associates, Inc.
- k. South Central Health Department
- l. Camas County Engineer at Galena Engineers.

(See Butlin ¶10).

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<sup>1</sup> Plaintiff contends that the County did not comply with Ordinance 142 which provides for when notice is required for 200 more property owners. Ordinance 142 was codified in the 2007 Zoning Ordinance. When the District Court in CV 07-24 preliminary enjoined the 2007 Zoning Ordinance, which the Court determined to include all predecessor ordinances as well, I.C. 67-6511(b) became the controlling statute on notice to 200 or more property owners.

9. The Commission held public hearings on the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map on April 21, 2008. (See Butlin ¶10, Exhibit D) All members of the Planning and Zoning Commission that owned land in the County that may potentially be rezoned by the adoption of a new zoning map recused themselves on the record and refrained from participating in the proceedings to adopt said legislation. The Commission allowed all interested persons to provide testimony. Plaintiff testified at all public hearings. *Id.*

10. The public hearing was closed at the conclusion of the April 21 public hearing. The Commission then took up the matter and rendered its recommendation to forward the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map to the Board for consideration and approval. No materials changes were recommended. A record of the hearings, findings made, and actions taken by the commission were duly recorded and maintained by the County. (See Butlin ¶12-13, Exhibit E).

11. The Commission forwarded its written recommendation to the Board which was received in a Board meeting on April 22, 2008. (See Butlin ¶13, Exhibit F)

12. Notice of Public Hearing before the Camas County Board of County Commissioners on the draft 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map were published in the April 23, April 30, and May 7, 2008 editions to the Camas County Courier. All notice and posting requirements were completed pursuant to I.C. §67-6509 and 6511(b). The legal notices were at least four inches by two columns in size and included a general summary of

the provisions of the zoning ordinance and comprehensive plan. The legal notice included map inserts and notice of the Commission's recommendation. (See Butlin ¶14, Exhibit G).

13. On May 12, 2008, the Board conducted public hearings on the proposed legislation taking public and written testimony. All Board members who owned property within the County recused themselves and did not vote to adopt the proposed zoning map. The public hearing was closed on May 12, 2008 at the conclusion of testimony. The Board then took up the matter and rendered its decision. No material changes were made. (See Butlin ¶17, Exhibit H).

14. Plaintiff attended and testified at all public hearings. (See Butlin ¶18, Exhibit I).

15. By Resolution 114 and 115 the County adopted the Comprehensive Plan and Land Use Map. (See Exhibit K). By Ordinance 157 and 158, the County adopted the Zoning Ordinance and Map. (See Exhibit L). On May 14, 2008 legal notice of Ordinance 157 and 158 was published in the Camas Courier which included the name of the county, the ordinance number, a descriptive title, summary of the principal provisions, effective date, a statement that the full text is available at the office of the Camas County Planning and Zoning Administrator, and a map. (See Butlin ¶19, Exhibit J).

16. At the public hearings, testimony was mixed. A petition was submitted with over 100 names supporting the County's adoption of the new legislation. The majority of the testimony against the adoption concerned the litigation against the County or other such complaints. Notably, they did not include substantive or relevant testimony as to the legislation itself including actual zoning districts, planning components, etc. (See Butlin ¶20).

17. Both the 2007 and 2008 zoning ordinance and map are in accordance with the text of the county's comprehensive plan and land use map. The comprehensive plan and zoning ordinances were worked on simultaneously throughout the planning process and thus are intricately related to each other. (See Backstrom, ¶15-18, Exhibit K)

18. The property which is the subject of the draft 2008 Zoning Map is the entirety of Camas County. (See Exhibit L). Camas County consists of largely agricultural land. A majority of the private land in Camas County is used for farming and ranching. A majority of the County was zoned agricultural to comply with the Land Use Section of the Comprehensive Plan that states the preservation of agricultural uses is of utmost importance. Commercial and residential zones were placed in areas of existing development to channel development away from the large agricultural areas and allow pre-existing community centers some additional growth to support schools and economic development in the County. (See Backstrom, ¶19, Exhibit K,L)

19. The Land Use Section of the Comprehensive Plan states that the northern part of the county would be a poor area for development. With the exception of some residential density to reflect current subdivisions located on the South Fork of the Boise River (over Fleck Summit), the northern portion of the County was zoned agricultural. (See Backstrom, ¶16, Exhibit K)

20. The Land use Section of the Comprehensive Plan states that commercial and residential use has traditionally been located in Fairfield, Soldier, West Magic, Corral, Hill City, Manard and Blaine. The Land Use Section states that the areas in Camas County most suited for higher density are the platted townsites and adjacent to West Magic (a community center). Fairfield

is the only incorporated town. Soldier, Corral, Hill City, Manard and Blaine are platted townsites. West Magic is not a platted townsite but several platted subdivisions are located there. Residential and commercial uses were zoned in the platted townsites and West Magic to comply with existing conditions and center any future commercial and residential development in established areas. Commercial and residential development was zoned in the Soldier Creek vicinity to reflect current development and channel development to established areas. Residential development was zoned in the Willow Creek vicinity to reflect current development and channel development to established areas. Commercial and residential development was zoned in the Solider Mountain Ranch area to reflect current development and channel development to established areas. Additional higher density residential zones were established near Soldier Mountain Ranch area, where existing subdivisions such as Mountain Sun and Smoky Dome Ranchos already exist. Some low density residential is zoned in the Squaw Flats area to reflect current development and allow for limited residential development in that area. (See Backstrom, ¶17, Exhibit K)

21. The Board considered the effect the zoning would have on affected political subdivisions that provide services to the County. The Board determined that the County should be zoned to provide for some growth in residential and commercial development to provide students and a tax base to support the schools. However, the growth must be controlled to avoid overwhelming the schools with too many new students at once. The Board determined that the draft 2008 Zoning Map accomplishes these goals. The Board determined that the irrigation districts would

not be adversely affected. The Board determined that the fire districts would not be adversely affected. (See Backstrom, ¶18)

22. On the day before Ordinance 153 was enacted, April 17, 2007, Plaintiff filed an application to rezone two eighty-acre parcels to R-7 (seven units per acre) pursuant to Zoning Ordinance 12 and Resolution 96. The northerly eighty acre parcel was zoned (A-T) both before and after the 2007-2008 legislative process; the southern parcel was rezoned from (A) to (R-1) as a result of the legislative process. At the time of application, the properties were designated as (R-1) on the land use map. While the application has been heard by the Planning and Zoning Commission, the application has not been heard before the Board. It had been set for public hearing before the Board of Commissioners for January 22, 2008. In the interim, Plaintiff sought and received preliminary injunctive relief precluding the County from processing any land use application under either the Zoning Ordinance 12 or 153. The Plaintiff sought to hold the County in contempt seeking incarceration should the County attempt to process an application pursuant to Ordinance 12. Upon the lifting of this preliminary injunction, Plaintiff is entitled to have his application presented to the Board pursuant to Ordinance 12, the zoning ordinance in existence at the time of application. (See Butlin, ¶19-20)

23. Plaintiff had the option to reapply under the 2008 legislation, but chose not to. After adoption of the 2008 legislation, the County sent a letter to each and every land owner with a pending land use application inviting them to reapply under the new 2008 ordinances since the preliminary injunction precluded the County's ability to process their application pursuant to

Ordinance 12 or 153. Every landowner so situated opted to reapply except for the Plaintiff.  
(See Butlin, ¶21, Exhibit M).

24. Plaintiff's Properties: Plaintiff owns the following parcels of property in Camas County:

a. Forty acre parcel at 770 E. 240 N.

- i. Prior to the 2007 amendments, the property was zoned Agricultural (A) allowing one unit per eighty acres;
- ii. After the amendments, the property was zoned Agricultural (A).
- iii. After the 2008 amendments, the property remained Agricultural (A).
- iv. Prior to the 2006 Comprehensive Plan Land Use Map amendments, the property was designated (A-T) a zoning designation allowing one unit per acre)), but (A) after the amendments.
- v. To the north, south, east and west the adjoining properties to this property were all zoned Agricultural (A) prior to 2007 and thereafter.
- vi. Effect of Legislation on Plaintiff: No Change

b. Twenty-nine acre parcel west of Soldier road.

- i. Prior to the 2007 amendments, the property was zoned Agricultural (A) allowing one unit per eighty acres;
- ii. After the 2007 amendments, the property was upzoned Residential (R-1), allowing one unit per acre and remains so today;
- iii. Prior to the 2006 Comprehensive Plan Land Use Map amendments, the property was designated (R-7) allowing seven units per acre, but R-1 after the amendments and remains so today.
- iv. To the north, south, east and west the adjoining properties to this property were all zoned Agricultural (A) prior to 2007, (R-1) after the 2007 amendments, and remain (R-1) after the 2008 amendments.
- v. Effect of Legislation on Plaintiff: Upzoned

c. one, one-acre lot within an existing, approved, and platted Homestead Subdivision with vested and approved one-acre sized lots.

- i. Prior to the 2007 amendments, the property was zoned (AT);
- ii. After the 2007 amendments, the property was zoned (A-5) allowing one unit per five acres;<sup>2</sup>

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<sup>2</sup> The entire subdivision, a preexisting subdivision with vested AT zoning, was mistakenly zoned A-5. All lots in the subdivision are one acre in size. Thus, the properties were rezoned to R-1 in 2008 to conform to the vested rights of the property owners.

- iii. After the 2008 amendments, the property was zoned Residential (R-1).
- iv. Prior to the 2007 amendments, the adjoining properties to the north, south, east, and west in the subdivision were also zoned (A-T), then rezoned to (AG-5) in 2007, and rezoned to (R-1) in 2008.
- v. Effect of Legislation on Plaintiff: No change

(See Butlin, ¶22).

25. As provided, Plaintiff allegedly has a contractual interest in two eighty acre parcels which was the subject of his rezone application; one of which was zoned AT throughout this process; the other was rezoned from (A) to (R-1) as a result of the zoning process. Plaintiff alleges that he holds a right of first refusal on a 67 acre parcel that was rezoned from AG to R1 as a result of the rezoning process. (See Butlin, ¶23).

### **STANDARD OF REVIEW**

Motions for summary judgment are governed by Rule 56 of the Federal Rules of Civil Procedure. Rule 56 provides, in pertinent part, that judgment

shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

See Fed.R.Civ.P. 56(c).

The Supreme Court has made it clear that under Rule 56 summary judgment is mandated if the non-moving party fails to make a showing sufficient to establish the existence of an element which is essential to the non-moving party's case and upon which the non-moving party will bear the burden of proof at trial. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct.



2548, 91 L.Ed.2d 265 (1986). A moving party who does not bear the burden of proof at trial may show that no genuine issue of material fact remains by demonstrating that “there is an absence of evidence to support the non-moving party's case.” *Id.* at 325. Once the moving party meets the requirement of Rule 56 the burden shifts to the party resisting the motion who “must set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). If the non-moving party fails to make such a showing on any essential element, “there can be no ‘genuine issue of material fact,’ since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.” *Celotex*, 477 U.S. at 323.

Moreover, under Rule 56, it is clear that an issue, in order to preclude entry of summary judgment, must be both “material” and “genuine.” An issue is “material” if it affects the outcome of the litigation. An issue, before it may be considered “genuine,” must be established by “sufficient evidence supporting the claimed factual dispute ... to require a jury or judge to resolve the parties' differing versions of the truth at trial.” *Hahn v. Sargent*, 523 F.2d 461, 464 (1st Cir.1975) ( quoting *First Nat'l Bank v. Cities Serv. Co. Inc.*, 391 U.S. 253, 289, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968)); *British Motor Car Distrib. v. San Francisco Automotive Indus. Welfare Fund*, 882 F.2d 371 (9th Cir.1989). Lastly, it is not enough for the [non-moving] party to “rest on mere allegations or denials of his pleadings.” I.R.C.P. 56(e).

## ARGUMENT

### I. INTRODUCTION

Plaintiff brings a declarative judgment action seeking the permanent injunction of Ordinance 157 (Zoning Ordinance), Ordinance 158 (Zoning Map), Ordinance Resolution 114 (Comprehensive Plan), and Resolution 115 (Land Use Map) for the County's failure to adhere to the Idaho Local Land Use Act's ("LLUPA") judicial review provisions denying Plaintiff due process of law. Specifically, Plaintiff alleges that, in enacting comprehensive planning and zoning legislation, Plaintiff is entitled to LLUPA's enhanced due process provisions which require: a transcribable record, findings of fact, conclusions of law, legal notice, a written record, and various other procedural and substantive due process statutory requirements pursuant to LLUPA. As a matter of law, County-Defendants are entitled to summary judgment. Plaintiff has not presented a justiciable case or controversy in that Plaintiff does not have standing to challenge the County's legislative activity. Plaintiff has not suffered a distinct palpable injury with a fairly traceable causal connection to a procedural/substantive error or arbitrary conduct committed by the County. As such, Plaintiff is not entitled to the quasi-judicial due process protections afforded under LLUPA.

### II. JUSTICIABLE CASE OR CONTROVERSY

Although the Declaratory Judgment Act Idaho Code, §10-1201 *et seq*, bestows the authority to declare rights, status, or other legal relations, that authority is curtailed by the rule that declaratory judgment can only be rendered in a case where an actual or justiciable

controversy exists lodged by one who has suffered particularized or personal harm that is different than that suffered by any other member of the public. *Schneider v. Howe*, 142 Idaho 767, 772, 133 P.3d 1232, 1237 (2006); *Harris v. Cassia County*, 106 Idaho 513, 516, 681 P.2d 988, 991 (1984); *Miles v. Idaho Power Co.*, 116 Idaho 635, 639, 778 P.2d 757, 761 (1989); *Selkirk-Priest Basin Assoc., Inc. v. State ex rel. Batt*, 128 Idaho 831, 834, 919 P.2d 1032, 1035 (1996).

Those who seek to bring a declaratory judgment action must satisfy the threshold requirement imposed by Article III of the United States Constitution:

First, the plaintiff must have suffered an “injury in fact” – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) “actual and imminent”, not ‘conjectural’ or ‘hypothetical;’ “Second, there must be a causal connection between the injury and the conduct complained of - the injury has to be “fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.” Third, it must be “likely”, as opposed to merely “speculative”, that the injury will be “redressed by a favorable decision.”

*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992);

**A. Standing – Distinct Palpable Injury**

Standing is a component of the constitutionally-based case-or-controversy rule. *Noh v. Cenarrusa*, 137 Idaho 798, 801, 53 P.3d 1217, 1220 (2002). The declaratory judgment act is not a forum for those with general complaints about the conduct of one’s local governing board. When considering whether a party has standing, the focus is on the *party*, not the *issues* the party raises. *Miles*, 116 Idaho at 641, 778 P.2d at 763.

The essence of the standing inquiry is whether the party seeking to invoke the court's jurisdiction has "alleged such a personal stake in the outcome of the controversy as to assure the concrete adversariness which sharpens the presentation upon which the court so depends for illumination of difficult constitutional questions." As refined by subsequent reformation, this requirement of "personal stake" has come to be understood to require not only a "distinct palpable injury" to the plaintiff, but also a "fairly traceable" causal connection between the claimed injury and the challenged conduct.

*Id.* To satisfy the standing requirement, the Plaintiff must "allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury." *Id.* Or, put differently, the Plaintiff must possess a "personal stake" in the controversy. *See Rural Kootenai Org., Inc. v. Board of Comm'rs*, 133 Idaho 833, 841, 993 P.2d 596, 604 (1999). Indeed, the Plaintiff must show a "peculiar or personal injury that is different than that suffered by any other member of the public." *Selkirk-Priest*, 128 Idaho at 834, 919 P.2d at 1035.

In *McCuskey v. Canyon County*, 123 Idaho 657, 851 P.2d 953 (1993), the appellant sought and was issued a building permit to erect a gas station and store. Thereafter the county issued a stop work order due to the 1979 adoption of a new comprehensive plan and zoning ordinance which downzoned his property from heavy industrial to rural residential effectively prohibiting the appellant's proposed use. The appellant challenged the Canyon County Zoning Ordinance and Comprehensive Plan for failure to comply with the notice provisions of I.C. §67-6511(b), which would have provided him constructive, if not actual, notice of the adoption of the zoning ordinance. He had neither. Thus, the appellant clearly suffered a distinct palpable injury

(stop work order) by virtue of the County's procedural error (failing to provide him due process (legal notice)) prior to downzoning his property.

We need go no further than the initial requirement of a concrete and particularized injury. The Plaintiff is unable to demonstrate this essential element of its cause of action; that he has suffered a distinct palpable injury different than that suffered by any other member of the public. Plaintiff has not had an application approved or denied pursuant to a zoning ordinance or comprehensive plan like Mr. McCuskey. Instead, Plaintiff, as an interested member of the public, attacks the legislative activity of a governing board itself. Legislative activity is not subject to the same due process requirements as quasi-judicial actions.<sup>3</sup>

Plaintiff's properties have not been downzoned. Rather they either remained the same or were even upzoned. (See Butlin ¶22). Plaintiff has not suffered harm by virtue of neighboring

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<sup>3</sup> Legislative actions are to be evaluated with a restricted standard of review; as a form of judicial deference to legislative actions. *Cooper v. Ada County Comm'rs*, 101 Idaho 407, 410, 614 P.2d 947, 952 (1980). In determining whether a zoning ordinance should be upheld, "our review of decisions of zoning authorities is limited. Zoning is essentially a political, rather than a judicial matter, over which the legislative authorities have, generally speaking, complete discretion. ... It is not the function of this Court or of the trial courts to sit as super zoning commissions." *Dawson Enterprises, Inc. v. Blaine County*, 98 Idaho 506, 511, 567 P.2d 1257, 1262 (1977). It is not for the Court to endorse or criticize the value of specific legislative enactments, because the political process is better suited to contend with the complex questions of public policy and competing social interest. *Burt v. City of Idaho Falls*, 105 Idaho 65, 68, 665 P.2d 1075, 1078 (1983).

A strong presumption exists in favor of the validity of local zoning ordinances. The burden of proving that the ordinance is invalid rests upon the party challenging its validity and the presumption in favor of validity can be overcome only by a clear showing that the ordinance as applied is confiscatory, arbitrary, unreasonable, and capricious. Where there is a basis for a reasonable difference of opinion, or if the validity of legislative classification for zoning purposes is debatable, a court may not substitute its judgment for that of the local zoning authority. *Sprenger, Grubb, & Associates v. City of Hailey*, 127 Idaho 576, 581 903 P.2d 741, 745 (1995);

"Legislative action is shielded from direct judicial review by its high visibility and widely felt impact, on the theory that the appropriate remedy can be had at the polls." *Burt*, 105 Idaho at 68, 665 P.2d at 1078 quoting *Cooper*, 101 Idaho at 410, 614 P.2d at 950.

properties being upzoned. *Id.* The evidence clearly shows that each and every property to the north, south, east, and west of Plaintiff's properties were rezoned in exactly the same fashion as the Plaintiff's properties. *Id.* Plaintiff has not suffered injury by virtue of increased competition; i.e. the permitting of other (R-1) development does not reduce the value to his property by creating added inventory. Standing does not exist when alleged damages flow from increased or perceived unfair competition.

("Generally, persons whose only complaint is that the rezoning ... would create competition with them in the conduct of their business have been held not to have standing to litigate the validity of the zoning action.")

4 Rathkopf's The Law of Zoning and Planning §63.34 (4<sup>th</sup> ed. 2005).

"a person whose sole interest for objecting to a zoning board's action is to prevent competition with his or her business is not a person aggrieved, and therefore does not have standing to challenge a zoning decision in court."

83 Am.Jur.2d Zoning and Planning §926 (2003). This approach, which denies standing to a mere competitor, is the prevailing law throughout the country.

Plaintiff has not suffered injury due to a pending land use application. Plaintiff has not yet sought to process a land use application pursuant to Ordinance 157. On the day before Zoning Ordinance 153 was enacted, Plaintiff filed an application seeking a rezone of his property to (R-7). (See Butlin, ¶19-21). Thus, the applicable ordinance to his application is Ordinance 12. The adoption of Zoning Ordinance 157 does not preclude him from going forward on his

application pursuant to Zoning Ordinance 12; the ordinance in effect at the time of his application.<sup>4</sup> See *Chisolm v. Twin Falls County*, 139 Idaho 131, 134, 75 P.3d 185, 188 (2003).

Further, a designation on a comprehensive plan land use map does not confer a vested property right and Plaintiff has not suffered harm by virtue of a subsequent change to the land use map. *Giltner Dairy, LLC v. Jerome County*, 145 Idaho 630, 181 P.3d 1238 (2008)<sup>5</sup>. As *Giltner and Highland's Development Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2008) illustrate, a comprehensive plan, zoning ordinance, and zoning map do not by their very legislative nature confer a right to develop, but are merely legislation applicable to property county-wide. The state legislature granted local governing boards the authority to exercise legislative judgment in determining the appropriate zoning designation throughout its jurisdiction — an individual has no right to a particular zone. Without any evidence to support a finding that Plaintiff has suffered a distinct palpable injury, Plaintiff does not have the standing to enjoin the County's legislative activity, and the County is entitled to summary judgment.

Even were the Plaintiff to demonstrate a distinct palpable injury, he would still bear the burden to demonstrate that he suffered the injury *by virtue of* a procedural or substantive error of the County as in *McCuskey* (See *Spencer v. Kootenai County*, 145 Idaho 448, 457, 180 P.3d 487, 496 (2008)) or a fairly traceable causal connection between the claimed injury and confiscatory,

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<sup>4</sup> Ironically, at least temporarily they do. Plaintiff sought a preliminary injunction of the County's zoning ordinances alleging that the County was precluded from processing applications under not only the 2007 ordinances, but its predecessor, Ordinance 12 as well. The Court agreed. Plaintiff thus enjoined his own application for the time being.

<sup>5</sup> This argument is besides the point as Resolution 96 was adopted *before* Plaintiff submitted his rezone application. Resolution 96 designated the properties pursuant to Plaintiff's application as conducive to R-1.

arbitrary, unreasonable or capricious conduct on the part of the county. See *Burt v. City of Idaho Falls*, 105 Idaho 65, 66, 665 P.2d 1075, 1076, FN.2 (1983).

### **III. WHAT LEVEL OF DUE PROCESS IS PLAINTIFF ENTITLED?**

In adopting comprehensive planning and zoning, Plaintiff would have this Court believe that: 1) the County is acting in a quasi-judicial capacity and thus LLUPA's enhanced due process requirements are applicable to such activity; and 2) that Plaintiff has the standing to assert or be afforded these enhanced due process protections. Specifically, Plaintiff contends that minimum due process requires the County to provide Plaintiff: 1) legal notice of the proceedings; 2) a meaningful opportunity to be heard; 3) adequate findings of fact, conclusions of law; and 4) a transcribable record. See *Cowan v. Bd. Of Comm'rs of Fremont County*, 143 Idaho 501, 508, 148 P.3d 1247, 1254 (2006). The case law and the plain text of the LLUPA judicial review provisions clearly demonstrates that the County is acting in a legislative capacity in enacting comprehensive planning and zoning, and Plaintiff is not entitled to enhanced due process in the quasi-judicial context.

#### **A. Quasi-Judicial vs. Legislative Distinction**

Quasi-Judicial activity In *Cooper v. Ada County Comm'rs*, 101 Idaho 407, 614 P.2d 947 (1980) the Idaho Supreme Court articulated:

It is beyond dispute that the promulgation or enactment of general zoning plans and ordinances is legislative action. *Dawson*, 98 Idaho at 506, 567 P.2d at 1257; *Harrell v. City of Lewiston*, 95 Idaho 243, 506 P.2d 470 (1973); *Cole-Collister Fire Protection District v. City of Boise*, 93 Idaho 558, 468 P.2d 290 (1970);



*Idaho Falls v. Grimmer*, 63 Idaho 90, 117 P.2d 461 (1941). However, appellants urge that a crucial distinction be drawn between a zoning entity's action in enacting general zoning legislation and its action in applying existing legislation and policy to specific, individual interests as in a proceeding on an application for rezone of particular property.

... Ordinances laying down general policies without regard to a specific piece of property are usually an exercise of legislative authority, are subject to limited review, and may only be attacked upon constitutional grounds for an arbitrary abuse of authority. On the other hand, a determination whether the permissible use of a specific piece of property should be changed is usually an exercise of judicial authority and its propriety is subject to an altogether different test.

Basically, this test involves the determination of whether action produces a general rule or policy that is applicable to an open class of individuals, interests, or situations, or whether it entails the application of a general rule or policy to specific individuals, interests, or situations. If the former determination is satisfied, there is legislative action; if the latter determination is satisfied, the action is judicial.

*Cooper*, 101 Idaho at 409-410, 614 P.2d at 949-950. See also *Cowan*, 143 Idaho at 512, 148 P.3d 1258 quoting *Burt*, 105 Idaho at 67, 665 P.2d at

Action is legislative when it affects a large area consisting of many parcels of property in disparate ownership.... Conversely, action is considered quasi-judicial when it applies a general rule to a specific interest, such as a zoning change affecting a single piece of property, a variance, or a conditional use permit. ... It is analogous to a general rezone which affects a large number of people-in this case, multiple owners of multiple tracts of land approximating over eight hundred individuals, each with varying affected interests and impacts, and which is highly visible to the public. ... The amendment of the plan and zoning of the annexed property affects the interests of all persons in the city in some manner. Such widely felt impact and high visibility is consistent with action deemed legislative.

*Burt*, 105 Idaho at 66, 665 P.2d at 1077; see also *Dawson*, 98 Idaho at 511, 567 P.2d at 1262.

As a matter of law, the comprehensive plan, zoning ordinance, and zoning map are county-wide legislation applicable to the entire county. As general legislation pertaining to “many parcels of property in disparate ownership”, they are wholly legislative in character. *Burt*, 105 Idaho at 67, 665 P.2d at 1075.

**B. LLUPA’s Judicial Review Remedies are applicable only in quasi-judicial activity**

The legislative vs. quasi-judicial distinction is a product of over half of a century of case law producing a fairly straightforward rule: If the action is quasi-judicial, then it is subject to judicial review and affected persons are afforded enhanced due process. If the action is legislative, then it falls outside the purview of LLUPA’s judicial review provisions. Strangely, the legislature does not address the distinction in LLUPA’s text, and with the most recent 2008 Supreme Court decisions, *Giltner Dairy, LLC v. Jerome County*, 145 Idaho 630, 181 P.3d 1238 (2008) and *Highland’s Development Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2008) the Court seems to set forward a basic statutory interpretation: zoning decisions are only subject to judicial review where there is a statute other than the IAPA that authorizes judicial review. It appears that LLUPA authorizes judicial review of five, and only five, types of permits: variances, special use permits, subdivisions, PUD’s, and building permits. Comprehensive Plans, Land Use Maps, Zoning Ordinances, and Zoning Maps rezoning property county-wide are not among the enumerated accepted bases for review. Awarding attorney fees to the City of Boise in *Highland* the Supreme Court on June 18, 2008 held “[b]ecause there is no statute

authorizing judicial review of the City's actions in this case, we dismiss the appeal.”<sup>6</sup> Similarly, LLUPA's judicial review provisions are inapplicable to comprehensive planning and zoning legislation.

1. Idaho Code §67-6521: Plaintiff is not an “affected person”?

For Plaintiff to invoke the judicial review protections of LLUPA, he must qualify as an “affected person”. See Idaho Code § 67-6521(1); *Evans v. Teton County*, 139 Idaho 71, 74, 73 P.3d 84, 87 (2003). An “affected person” is “one having an interest in real property which may be *adversely affected* by the *issuance or denial of a permit* authorizing the *development*.” §67-6521(1)(a) (Emphasis Added). In *Giltner Dairy, LLC v. Jerome County*, 145 Idaho 630, 181 P.3d 1238 (2008), the plaintiff sought to overturn Jerome County's comprehensive plan land use map. The Supreme Court unequivocally held that an

ordinance amending the comprehensive plan map does not authorize any development. A comprehensive plan is not a legally controlling zoning law, it serves as a guide to local government agencies charged with making zoning decisions. ... Because the amendment to the comprehensive plan map does not authorize development, [the plaintiff] is not an affected person under that statute.

*Giltner*, 145 Idaho at 633, 181 P.3d at 1241 (2008) at 3-4.

In *Highland's Development Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2008), the applicant sought annexation to the City of Boise with a zoning classification of R-3, or three units per acre. The property's vested existing zoning in the county would have allowed densities

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<sup>6</sup> Note also: Even assuming a LLUPA statute authorizes judicial review of the County's legislative activity, “agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.” I.C. §67-5279(4). As provided, Plaintiff has suffered no injury.

of up to six units per acre. The city council approved the annexation of the property, but zoned the property "A" (Open) permitting only one dwelling unit per acre. The applicant sought judicial review for this "downzoning" of the property. The Supreme Court held that an application did not involve the issuance or denial of a permit authorizing development and dismissed the action awarding attorney fees to the City.

In the present action, unlike in *Highland*, there isn't even an application for a rezone of specific property. Plaintiff has an interest in real property but it has not been adversely affected. The challenged legislative activity is the enactment of countywide comprehensive planning and zoning which is not an issuance or denial of a permit. Lastly, a comprehensive plan, land use map, zoning ordinance, and county-wide zoning map, per *Highlands*, do not "authorize development".

2. Idaho Code §67-6536 Transcribable records are not required for legislative activity.

I.C. §67-6536 provides:

In every case in this chapter where *an appeal is provided* for, a transcribable verbatim record of the proceeding shall be made... . The proceeding envisioned by this statute for which a transcribable verbatim record must be maintained shall include all public hearings at which testimony or evidence is received or at which an applicant or affected person addresses the commission or governing board regarding *a pending application* or during which the commission or governing board *deliberates* toward a decision after compilation of the record.

(emphasis added). No appeal is provided for declaratory judgment actions challenging legislative activity. Further, a transcribable record is required only for a public *hearing* pertaining to a

*pending application* at which *an applicant or affected person* addresses the Board, evidence is received, or the Board *deliberates* after compilation of the record. Per *Giltner* and *Highlands*, there is no pending application; no applicant; and no affected person. Thus, no transcribable record is required.

3. Idaho Code §67-6509: Record of the hearings shall be maintained.

Even were Idaho Code §67-6536 to apply, the County has in fact maintained a record of all public hearings pertaining to the comprehensive plan, zoning ordinance, and map, which this Court has already reviewed pursuant to Plaintiff's Preliminary Injunction motion. Pursuant to Idaho Code §67-6509, a "record of the hearings, findings made, and actions taken" shall be maintained by the County. Transcribable audio recordings were maintained and submitted into evidence representing each and every public *hearing* for the challenged legislation. Against the plain text of the statute, Plaintiff wishes to add the word "written" to this requirement; that a written record, a transcribed record, i.e. findings of fact, conclusions of law must be created. There is no such affirmative obligation required beyond the plain language of the statute.

4. Idaho Code §67-6535: Written findings of fact, conclusions of law.

Idaho Code §67-6535 provides that the *approval or denial* of any *application provided for in LLUPA* shall be based upon standards as set forth in the comprehensive plan and zoning ordinance, and to be in writing. As the Supreme Court has made patently clear in *Giltner* and

*Highlands*, there has been no approval or denial of an application that would subject comprehensive planning and zoning legislation to the quasi-judicial review provisions of LLUPA. Of course, the zoning ordinance, map, comprehensive plan, and land use map are all written documents which in and of themselves are public documents or records promulgated in a public hearing and contained in the record. See *Evans v. Teton County*, 139 Idaho 71, 73 P.3d 84 (2003). *Res Ipsa Loquitur*: the thing speaks for itself.

**C. Due Process in the Legislative Context: I.C. §67-6509 and §67-6511.**

**1. Actual Notice**

Since the Plaintiff is not entitled to the due process protections afforded to “affected persons” pursuant to LLUPA’s judicial review provisions, what due process, if any, is Plaintiff entitled to and did the County fail to provide him this due process? Pursuant to Idaho Code §67-6509 and §67-6511, Plaintiff, as a member of the public, is entitled to notice and an opportunity to be heard. Plaintiff alleges numerous procedural violations mostly pertaining to defective notice or other publication requirements. While the County certainly disputes these allegations, they are also immaterial. Regardless of alleged defective notice, Plaintiff waives any such challenge in that he attended and testified extensively at each and every public hearing and most, if not all, public workshops, informational sessions, etc. (See Butlin ¶19,21, Exhibit M and N.) Further, Plaintiff wholly fails to demonstrate that he suffered an injury by virtue of a procedural error; *Spencer v. Kootenai County*, 145 Idaho 448, 453, 180, 184, P.3d 487, 492 (2008). In *Cowan*, the court noted:

[T]he Board concedes that both notices were defective. Nonetheless, Cowan has failed to demonstrate that his substantial rights were prejudiced by either defective notice. First, Cowan's counsel attended the ... hearing and submitted a brief objecting to notice. Moreover, Cowan spoke against the application at that hearing. Therefore, even if the notice were defective, Cowan has failed to demonstrate how this defect prejudiced his substantial rights since he clearly had notice of the meeting.

*Cowan*, 143 Idaho at 513, 148 P.3d at 1259. The nexus connecting any alleged procedural error and substantive right of the Plaintiff is simply not present.

In *McCuskey*, 123 Idaho 657, 851 P.2d 953 (1993), the plaintiff sought declarative judgment to enjoin the zoning ordinance that rezoned his property leading to the stop work. His basis was the County's failure to provide him actual, constructive, or legal notice pursuant to Idaho Code §67-6511(b). The Idaho Supreme Court agreed holding that the zoning ordinance downzoned the plaintiff's land which precipitated the stop work order of his previously approved use, and therefore McCuskey had standing to challenge whether he was entitled to and had received notice of the hearing pursuant to Idaho Code §67-6511(b).

What is important to note about the decision is that the court did not substitute its judgment for that of the board as to whether the property should or should not be downzoned. Further, the court did not simply find that the county failed to follow procedural statutory guidelines as a basis to enjoin the ordinance. Rather, the court limited its review as to whether 1) the plaintiff suffered actual harm; 2) whether the county committed a procedural error; 3) and whether the harm suffered had a fairly traceable causal connection to that procedural error. Further, the redress sought, permanent injunction, would redress the injury by reinstating the

zoning permitting the gas station. Then and only then, did the court have the power to void the county's legislation due to its statutory procedural error.

Unlike Mr. McCuskey, Plaintiff has not had an application or permit revoked or denied. Plaintiff's property has not been downzoned. Lastly, viewing the evidence most favorably to the Plaintiff, even if we were to assume that there was defective notice, the Plaintiff does not have the standing to allege he was denied due process for defective notice as Plaintiff attended and testified at length at each and every hearing.

2. Conflict of Interest – Denial of Due Process?

Idaho Code §67-6506 provides that government officials shall not participate in any proceeding or action when he has an economic interest in the procedure or action. In *Manookian v. Blaine County*, 112 Idaho 697, 735 P.2d 1008 (1987), the applicant sought a conditional use permit to construct electrical transmission lines. Several potential routes were identified to locate the lines, and the commissioners declined to approve the route which ran through property owned by two of the planning and zoning commissioners in favor of the route which crossed the property owned by the plaintiffs. The court reasoned that the impact upon the Commissioners' land of the rejected route constituted an economic interest. Further, the chosen route caused a distinct palpable injury to the plaintiff's property.

The present action is distinguishable from *Manookian*. In *Manookian*, the properties owned by the plaintiffs and the commissioners were the subject of a specific application. The



members specifically diverted attention from their own properties in favor of the plaintiff's property. Thus, there was a causal and spatial connection, a nexus, between the respective properties as possible locations for the power lines. In contrast, the present action is legislative in nature applying county-wide. Plaintiff rests on its mere allegation that government officials, who are required to reside in the County, have a *per se* conflict by virtue of their ownership of property in the county without presenting any additional evidence. The County maintains the position that provided the county-wide rezoning is rationally related to a legitimate governmental objective, the legislation is not subject to injunction.<sup>7</sup>

For purposes of summary judgment, this is academic. Plaintiff has failed to demonstrate a nexus, or spatial proximity, or any relationship between property owned by the County board members with alleged conflicts and an actual, particularized harm it caused to Plaintiff's property. See *Lujan*, 504 U.S. at 560. Further, while this issue is hotly contested in CV 07-24 where the District Court held that a board member has a conflict of interest by virtue of his ownership of property within the county, all County officials who owned property in the county recused themselves from participating in the enactment of Ordinance 158, the county zoning map because of this holding.<sup>8</sup> Because all governmental members who owned property in the County recused themselves, and because there is no showing demonstrating a nexus between an alleged

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<sup>7</sup> Of course, the government official may be subject to criminal penalties if the evidence demonstrates a knowing violation of the statute (See IC 67-6506) as well as redress from the electorate, but the legislation itself, if it is rationally related to a legitimate governmental objective, is not subject to injunction.

<sup>8</sup> The County still maintains that no conflict of interest existed and the county officials did not have to recuse themselves.

conflict of interest and a distinct palpable injury suffered by Plaintiff, as a matter of law, the County is entitled to summary judgment.

**D. Idaho Code 67-6508: Comprehensive Planning and other Substantive Dictates**

Plaintiff seeks to enjoin the Comprehensive Plan, Land Use Map, and Zoning Ordinance based upon his mere allegations that the County failed to conduct a comprehensive planning and zoning process. Aside contesting this assertions, the County is entitled to summary judgment because Plaintiff wholly fails to demonstrate how this perceived defect causes him a distinct palpable injury or otherwise substantially impairs a fundamental right.

Idaho Code §67-6508 provides that the commission shall conduct a comprehensive planning process to prepare, implement, and update its comprehensive plan. Similarly, Idaho Code §67-6507 identifies the powers of the planning and zoning commission in relation to the planning process. It provides that the commission shall provide for citizen meetings, hearings, surveys, *or* other methods to obtain advice on the planning process and implementation of the plan. Thereafter, the section provides that the commission *may*, or in other words, has the discretion to, consult with public officials or other professional organizations, conduct informational meetings, etc.

Even in quasi-judicial proceedings, the Court is not empowered to substitute its judgment for the governmental entity and shall defer to the factual determinations of the governing body unless they are clearly erroneous. *Spencer*, 145 Idaho at 452, 180 P.3d at 491. In legislative

actions, the court has even less or “limited” review. Affording the legislative branch nearly complete discretion, the governing board’s decision shall not be “disturbed absent a clear showing that it is confiscatory, arbitrary, unreasonable or capricious.” *Burt v. City of Idaho Falls*, 105 Idaho 65, 66, 665 P.2d 1075, 1076, FN.2 (1983); *Dawson*, 98 Idaho at 506, 567 P.2d at 1257. Legislative activity is “capricious if it is done without a rational basis” and “arbitrary if it was done in disregard of the facts and circumstances presented or without adequate determining principles.” *American Lung Ass’n, etc. v. State, Dep’t of Agriculture*, 142 Idaho 544, 547, 130 P.3d 1082, 1085 (2006).

Plaintiff fails to present any evidence that the County’s legislation is confiscatory, arbitrary, unreasonable or capricious. Quite the contrary, the County clearly had a rationale basis pursuant to a legitimate governmental objective to undertake revisions to the zoning ordinance, zoning map, comprehensive plan, and land use map with the goals of maintaining agricultural uses in rural areas and residential and commercial uses in areas already developed or historically utilized in that fashion. (See Backstrom ¶5-8). Over the course of three years, the commission conducted an extensive comprehensive planning process in updating the comprehensive plan conducting, on almost a weekly basis, multiple informational workshops, public meetings, and numerous public hearings in considering an amendment to the comprehensive plan. (See Backstrom ¶4,9).

The County did not feel that new studies were necessary as the preexisting plan adequately addressed this need. (See Backstrom ¶6). There is no requirement that a county is

*required* to expend the considerable resources to hire new consultants or perform new studies each time the plan is amended. Idaho Code §67-6508 simply provides that the *comprehensive plan* itself must include all planning components including property rights, population, school facilities and transportation, economic development, land use, natural resources, hazardous areas, public services and facilities, recreation, special areas, housing, community design, and implementation. Resolution 114 and 115 is in compliance with Idaho Code §67-6508: *Res Ipsa Loquitur*, the thing speaks for itself. The comprehensive plan contains all of the required planning components.

In order to overturn the Board's action, this Court would have to find that the Board's conduct was arbitrary and capricious in enacting its legislation *and* that Plaintiff suffered a distinct palpable injury by virtue of this arbitrary, capricious conduct. As a matter of law, Plaintiff simply does not have the standing to challenge the County's legislation. Merely reciting LLUPA provisions, Plaintiff is unable to show that he suffered a distinct palpable injury by virtue of the County's alleged failure to conduct a comprehensive planning and zoning process. There is no Idaho case law where a plaintiff was found to have standing to challenge a comprehensive plan independent from the approval or denial of a specific application based upon that plan. Plaintiff has not had an application approved or denied based upon the County's comprehensive plan. Further, comprehensive plans have only been enjoined where a planning component has been wholly absent as opposed to where a particular plaintiff might disagree with its wisdom. In *Sprenger Grubb & Associates v. City of Hailey*, 133 Idaho 320, 986 P.2d 242

(1999), the plaintiff appealed the Hailey City Council's rezone of his property from commercial to residential (distinct palpable injury). The Court invalidated the rezone because the rezone was based upon a comprehensive plan that did not include all of the required components. Thus, the comprehensive plan came under collateral attack based upon the distinct palpable injury pertaining to the rezone.

The Plaintiff brings this action, not to repair an actual particularized harm suffered, but to have this Court substitute its own judgment for that of the County Board. Plaintiff simply disagrees with the direction that the elected officials have undertaken in the comprehensive planning and zoning process. "[C]ontrary to Spencer's assertion, due process does not require any particular technical or educational background on the part of the decision-maker." *Spencer*, 145 Idaho at 455, 180 P.3d 487 494. The Board members are elected officials engaged in their legislative function. They have articulated a rationale basis for enacting the challenged legislation. As *Burt* and subsequent cases have staunchly held, "legislative action is shielded from direct judicial review by its high visibility and widely felt impact, on the theory that appropriate remedy can be had at the polls." *Burt*, 105 Idaho at 66, 665 P.2d at 1076. Having failed at the election polls, Plaintiff now turns to the Court to invoke his political and legislative aspirations. Because the County had a rational basis in light of the facts and circumstances in amending its comprehensive planning and zoning legislation, and the Plaintiff's absence of any distinct, palpable injury, the County is entitled to summary judgment as a matter of law.

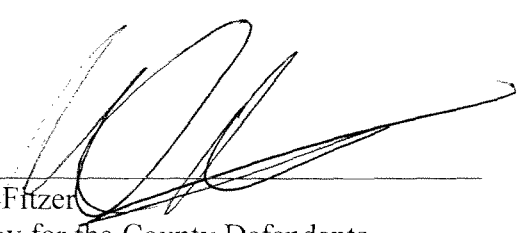
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## CONCLUSION

While the Plaintiff and the County disagree as to a myriad of factual allegations, as a matter of law, the Plaintiff is unable to carry its burden that it has standing to challenge the County's legislative activity. The Plaintiff simply has not suffered a distinct palpable injury with a fairly traceable connection to a procedural error or arbitrary conduct on the part of the county. "It is not enough that the party is a concerned citizen who seeks to ensure that a governmental entity abides by the law." *Thomson v. City of Lewiston*, 137 Idaho 473, 50 P.3d 488 (2002) Plaintiff's properties have remained the same or were even upzoned. LLUPA's judicial review provisions requiring transcribable records and findings of fact do not apply to legislative activity. The County complied with all notice and hearing requirements which, even if defective, could not be asserted by the Plaintiff who had actual notice and did testify at each public hearing. Lastly, while the Plaintiff has a different legislative agenda than the County, even viewed most favorably to the Plaintiff, the County has expressed its rationale for amending its legislation which does not rise to level of arbitrary or capricious conduct. Defendants respectfully requests that this Court grant its Motion for Summary Judgment awarding reasonable attorney fees and costs incurred in defending this action as Plaintiff never possessed a reasonable basis in law or fact to argue it had standing to challenge the County's legislative activity.

Dated this 11 day of February, 2009.

MOORE SMITH BUXTON & TURCKE, CHTD.



Paul J. Fitzer  
Attorney for the County Defendants

\* \* \*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Defendant's Motion for Summary Judgment was this 11 day of February, 2009 served upon the following individuals and in the corresponding manner:

Christopher P. Simms  
P.O. Box 3123  
Ketchum, ID 83340

*Via United States mail*



Paul J. Fitter



Paul Fitzer, ISB No. 5675  
MOORE SMITH BUXTON & TURCKE, CHTD.  
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Fax: 208/331/1202

FILED  
2-13-09  
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ROLLIE BENNETT  
CLERK OF THE DISTRICT COURT  
*Barbara D. Walls*

*Attorneys for Defendants Camas County and the Individual Commissioners*

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR CAMAS COUNTY**

GEORGE MARTIN and MARTIN CUSTOM  
HOMES, LLC,

Plaintiffs,

v.

CAMAS COUNTY, IDAHO, by  
and through the duly elected Board of  
Commissioners in their official capacity,  
KEN BACKSTROM, BILL DAVIS, and RON  
CHAPMAN,

Defendants.

Case No. CV-2008-40

AFFIDAVIT OF KEN BACKSTROM IN  
SUPPORT OF DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT

State of Idaho )  
 ) ss.  
County of Camas )

Ken Backstrom, being first duly sworn, sayeth as follows:

ORIGINAL

1. My name is Ken Backstrom. I am an adult human being over the age of 18 years, and I am of sound mind. The statements made in this affidavit are made upon my own personal knowledge and are true to the best of my knowledge.

2. I am the Chairman for the Board of County Commissioners for Camas County. I have served as such for all relevant periods pertaining to this cause of action.

3. By virtue of serving as a commissioner, I am familiar with the issues pertaining to the current legal action against the County; the legal process and substantive enactment of the 2006-2007 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map, and the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map passed by the Planning and Zoning Commission and the County Board of Commissioners in May, 2008.

4. Beginning in 2005 and continuing until today, Camas County began a comprehensive planning and zoning process with the ultimate goal to adopt a new comprehensive plan, land use map, zoning ordinance, zoning map, as well as a new subdivision ordinance which we are currently working on now. Prior to adopting said legislation, the County conducted numerous citizen meetings, workshops, informational sessions, public meetings, and ultimately public hearings. The County heard from countless public citizens, governmental agency representatives, public interests groups, and other experts. Although the County has made minor modifications to its zoning and subdivision ordinances in the past, they had essentially remained unchanged for several years until we began this process in 2005.

5. Our rationale for adopting a new comprehensive plan and zoning ordinance was to protect the health, safety, and welfare of the citizens of Camas County. Prior to engaging in this

process, unless an individual applicant specifically rezoned a particular parcel of property, the entire county was zoned Agricultural. This zoning designation existed regardless of the historical nature of the property, whether agricultural, commercial, or residential. Many areas were even tax assessed as commercial but were still identified as Agricultural on the then existing zoning map.

6. More importantly, the prior comprehensive plan, adopted in 1997, including its land use map unfortunately designated entire areas of the county as Agricultural Transitional ("AT"), which allowed one unit per acre. For example, an entire area of the county, approximately 92,160 acres in size to the north of the City of Fairfield, was designated on the land use map as (AT). We did not feel that the then current comprehensive plan, zoning ordinance and subdivision ordinance adequately provided for potential growth that could have occurred given the economic climate in 2004-2006. Until the downturn in the economy, development proposals had continued to increase within this area. Between August, 2001 and November, 2005 approximately thirty-five rezones were passed rezoning parts of the county from (A) to (AT). In March, 2005 ten rezones were approved from (A) to (AT). In July another six were rezoned in the same fashion; August: one, September: four; and two more in November. A total of 2001 acres was rezoned from (A) to (AT) between March and November of 2005.

7. The County was concerned about requiring and providing for future infrastructure needs. For example, the zoning ordinance provided for R-7 zoning, and although no property in the county had ever been rezoned to R-7, we were concerned whether the public infrastructure could support such a high density level. In order to assure safe water, the County needed to ensure that

central water and sewer was available and even required in the appropriate circumstances. Changes also needed to be implemented to preserve and protect the resources that provide the character and economic opportunities for the County.

8. If the trend of rezones continued, potentially 92,000 acres was at risk of being rezoned from (A) to (AT) pursuant to the then existing comprehensive plan thus allowing valuable farm land to be developed into lots of one dwelling per acre. While the County was not compelled to grant these rezones, it aptly demonstrated the necessity of revising the comprehensive plan and zoning ordinances in order to limit development in agricultural areas and focus density in areas traditionally or were already developed.

9. Over the course of two years, the County held numerous (often weekly) informational sessions, public workshops, public meetings and ultimately public hearings. The Board of Commissioners ultimately adopted the Comprehensive Plan including land use map via Resolution 96 on or about May 25, 2006. To include all land within the county including the largely uninhabited northern portion of the county, the Board conducted an additional public hearing on the Plan including land use map which was adopted via Resolution 103 on March 29, 2007. The Board conducted a public hearing ultimately adopting the zoning ordinance (Ordinance 153) and zoning map (Ordinance 150) on or about April 18, 2007.

10. On or about May 4, 2007, Plaintiff brought a declarative judgment action in CV-2007-24 against the County seeking the permanent injunction of Ordinance 150 (Zoning Map), Ordinance 153 (Zoning Ordinance), Resolution 96 (Comprehensive Plan), and Resolution 103 (Land Use

Map). Also, Plaintiff sought the preliminary injunction of the County's legislation seeking to enjoin the County from processing any land use applications.

11. The District Court of Camas County granted the preliminary injunction stating that the County is precluded from processing land use applications pursuant to the zoning ordinance as amended in 2007. The District Court however stated that the County was free to enact new ordinances.

12. The Board adopted a moratorium via Ordinance 155 on all building permits and land use applications on March 10, 2008 to comply with the Court's March 7, 2008 Order and allow time to adopt new planning and zoning legislation.

13. The Commission held several meetings to discuss the new ordinances and resolutions; the drafts of which had been prepared by the planning staff and our legal representatives.

14. After receiving a recommendation of approval from the Commission, the Board conducted public hearings on May 12, 2008 and adopted Resolution 114 and 115 (Comprehensive Plan and Land Use Map) and Ordinance 157 and 158, (Zoning Ordinance and Map).

15. With regard to the comprehensive plan, we did not feel that the entire text needed to be updated although the Commission spent months on the text and made whatever textual changes they deemed necessary. In 1997, with the aid of experts hired to assist, the county adopted satisfactory provisions which included maps, charts, statistics, and other valuable information that were still viable in 2008. The plan contained all the required planning components, and the

only component that needed to be addressed in 2006/2007 was the land use map. Only minor changes were made for the 2008 land use map. (See Exhibit K)

16. The Land Use Section of the Comprehensive Plan states that the northern part of the county would be a poor area for development. With the exception of some residential density to reflect current subdivisions located on the South Fork of the Boise River (over Fleck Summit), the northern portion of the County is zoned agricultural. (See Exhibit K)

17. The Land Use Section of the Comprehensive Plan states that commercial and residential use has traditionally been located in Fairfield, Soldier, West Magic, Corral, Hill City, Manard and Blaine. The Land Use Section states that the areas in Camas County most suited for higher density are the platted townsites and adjacent to West Magic (a community center). Fairfield is the only incorporated town. Soldier, Corral, Hill City, Manard and Blaine are platted townsites. West Magic is not a platted townsite but several platted subdivisions are located there. Residential and commercial uses were zoned in the platted townsites and West Magic to comply with existing conditions and center any future commercial and residential development in established areas. Commercial and residential development was zoned in the Soldier Creek vicinity to reflect current development and channel development to established areas. Residential development was zoned in the Willow Creek vicinity to reflect current development and channel development to established areas. Commercial and residential development was zoned in the Solider Mountain Ranch area to reflect current development and channel development to established areas. Additional higher density residential zones were established near Soldier Mountain Ranch area, where existing subdivisions such as Mountain

Sun and Smoky Dome Ranchos already exist. Some low density residential is zoned in the Squaw Flats area to reflect current development and allow for limited residential development in that area. (See Exhibit K)

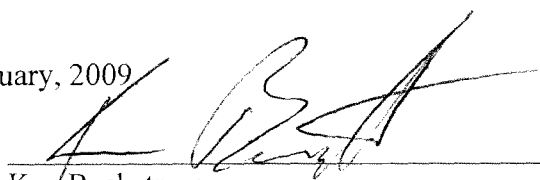
18. As such, the 2008 Zoning ordinance and Map are in accordance with the text of the county's comprehensive plan and land use map as adopted by Resolution 103, on March 29, 2007. The property which was the subject of the 2008 zoning map is the entirety of Camas County. Camas County consists of largely agricultural land. A majority of the private land in Camas County is used for farming and ranching. A majority of the County was zoned agriculture to comply with the Land Use Section of the Comprehensive Plan that states the preservation of agricultural uses is of utmost importance. Commercial and residential zones were placed in areas of existing development to channel development away from the large agricultural areas and allow pre-existing community centers some additional growth to support schools and economic development in the County. (See Exhibit L)

19. The Board has considered the effect the zoning would have on affected political subdivisions that provide services to the County. The Board determined that the County should be zoned to provide for some growth in residential and commercial development to provide students and a tax base to support the schools. However, the growth must be controlled to avoid overwhelming the schools with too many new students at once. The Board determined that the 2007 and 2008 Zoning Map accomplishes these goals. The Board determined that the irrigation districts would not be adversely affected. The Board determined that the fire districts would not be adversely affected.

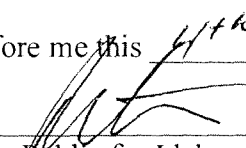
20. From the very start of the comprehensive planning and zoning process which began in 2005, the Plaintiff has attended and participated at nearly every informational session, workshop, and public meeting. For both the 2006-2007 legislation and the 2008 legislation, he attended and testified at each and every public hearing. He has had copies of the proposed legislation and has offered his opinion at every occasion.

Further your affiant sayeth naught.

Dated this 4<sup>th</sup> day of February, 2009

  
Ken Backstrom

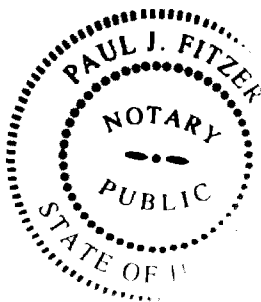
Subscribed and sworn to before me this 4<sup>th</sup> day of February, 2009.

  
Notary Public for Idaho

Residing at:

My commission expires:

Boise, ID  
12/10/2010






### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Affidavit of Ken Backstrom was this 11<sup>th</sup> day of February, 2009 served upon the following individuals and in the corresponding manner:

Christopher P. Simms  
P.O. Box 3123  
Ketchum, ID 83340

Method: Mail

  
Paul Entzer

CHRISTOPHER P. SIMMS  
Attorney at Law  
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ISB# 7473

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ROLLIE BENNETT  
CLERK OF THE DISTRICT COURT  
Rollie Bennett

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN, )  
)  
Plaintiff, )  
)  
and )  
)  
MARTIN CUSTOM )  
HOMES, L.L.C., )  
)  
Plaintiff, )  
v. )  
)  
CAMAS COUNTY, IDAHO, )  
By and through the duly elected )  
Board of Commissioners in )  
their official capacities, )  
)  
)  
KEN BAXTROM, )  
BILL DAVIS, and )  
RON CHAPMAN, )  
)  
Defendants, )  
\_\_\_\_\_ )

Case Nos. CV-2008-40 &

AFFIDAVIT OF GEORGE MARTIN  
IN OPPOSITION TO  
MOTION FOR SUMMARY JUDGMENT

STATE OF IDAHO           )  
                                      )  
COUNTY OF CAMAS        )

I, GEORGE MARTIN, JR., being duly sworn do state as follows:

1. I am the Plaintiff herein, and own real property intended for development and hold valuable contractual rights to other property in Camas County. I am a real estate agent and have been involved in the sale and development of real property for my entire professional career and am familiar with real property values from a development and retail perspective due to my training and experience in the profession.
2. After several meetings with Ed Smith, owner/broker of Town & Company Realtors regarding a group properties Mr. Smith had listed, on or about September 8, 2004, I signed a Dual Agency Agreement with Mr. Smith and I entered into contracts to purchase four (4) separate parcels of real property located just outside the City of Fairfield, in unincorporated Camas County, generally described as an eighty-one (81) acre parcel; options on a twenty-nine (29) acre parcel; an eighty (80) acres parcel; and a sixty-seven (67) acre parcel on which a "first right of refusal" was acquired.
3. The above described contracts to purchase were contingent upon rezone of all parcels and preliminary plat approval as to the eighty-one (81) acre parcel.
4. The subject properties were contiguous to one other making them ideal for development. The property is located just one half (1/2) mile north of the city limits of Fairfield, within walking distance of the schools, Post Office, City Hall, Fire Department, Sheriff Department, and located on one of the only paved roads in Camas County.

5. Mr. Smith represented to me that the various parcels described were designated for high density residential development in the Counties planning and zoning regulations. I sought to verify this information by researching the applicable laws.

6. Prior to entering into this agreement I also meet with Mr. Earl Wilson, Camas County Planning & Zoning Administrator to confirm these facts. Mr. Wilson confirmed the information gathered from Mr. Smith was true. I was provided copies of the then current, 1997, and former, 1974, Camas County Comprehensive Plans and confirmed this has been the direction the community has wanted to grow because it was close to services and the City of Fairfield would benefit from the growth. The other reasons it was identified as the preferred area is the fact that preservation of agriculture was important and residential developments would be encouraged near community centers, and because it is not part of the aquifer re-recharge area, and near enough to Fairfield for a possible sewer hook-up, or alternatively package sewer treatment plant.

7. Upon completing my due diligence I discovered that at the time I acquired the interest in the parcels of real property they were designated as high density residential on the Comprehensive Plan Land Use Map, designated R-7 in the Zoning Ordinance text providing up to seven (7) residential housing units per acre, but were zoned Agricultural, allowing only one residential unit for each eight (80) acres. Residential Zoning (R-7) was the only residential zone available at the under the zoning ordinance.

8. The Comprehensive Plan text, throughout in various sections designated the real property I had acquired the above described interest, as uniquely suitable for high density residential development. My specific review of the Comprehensive Plans revealed the following key passages;

1974

- (a) The County can expect some high density settlement between Fairfield and the small township of Soldier to the north. A new sewage plant can handle a reasonable amount of growth. A reasonable growth in population, rather than the opposite trend, is imperative to the continued economic welfare of the County seat of Fairfield.
- (b) The geography of the county will limit dense population in most areas because of the problems of water availability, sewage disposal, electrical power supply, flooding and winter snow conditions: therefore, clustered growth is preferred.
- (c) The implementation of the policy for cluster development will required the coordinated efforts of many different private and public agencies. Important decisions will come from federal, state, and County agencies, (Idaho Dept. Public Health, Soil Conservation Service, Camas County Commissioners). The key element in the implementation of center development will be the establishment and expansion of water and sewer districts. This primarily is a local responsibility but the County will likely need to play a more important role in requiring proper water and sewer facilities.
- (d) The extension of central sewer and water may appear to some as granting a land use preference to certain areas, however, this character, provide for services, reduce costs, and still accommodate growth.

1997

- (e) The northern part of the county is rough mountainous land and would be a poor area for development. The country is steep and subject to snow avalanche, as well as demanding heavy maintenance cost for roads and public utilities. The center of the valley has a high water table, and ground disposal of sewerage would often be difficult in anything other than large lots. To be adapted for urban use would require development patterns that would facilitate the treatment of effluent to secondary levels. **The area in Camas County most suited for higher density development is the area adjacent to and north of the city of Fairfield to the Soldier township, and adjacent to West Magic.** (emphasis added)
- (f) LAND USE SECTION OBJECTIVES
  - 1) Agricultural use must be protected above all other uses in the county, given its importance to the economy and way of life.
  - 2) Residential uses will be encouraged in areas where such development has minimal impact upon the agricultural uses and on the environment in the county.
  - 3) Development will be encouraged to preserve wide open spaces, aesthetics of the land and to be accomplished in appropriate and compatible areas for the use.
  - 4) Provide a mechanism for Planned Unit Developments (PUD) and other tools to encourage high quality, clustered development.

5) Encourage the development of residential areas that are clustered, preserving larger agricultural parcels into the future. Prior to placement of these residential clusters care must be taken to study the environmental effects such development might have on the surrounding areas (such as septic, surface and groundwater, watersheds, flora and fauna, riparian areas, wetland and wildlife areas, erosion, soils and historical significance) and the transportation system serving the development as well as other factors.

9. The text of the Comprehensive Plans was supported by the Comprehensive Plan Land Use Designation Map, which indicated the property north of Fairfield, both on the east & west sides of Soldier Road, and including the townsite of Soldier, as Residential – R-7, including the subject property. The R-7 designation boundary was the westerly edge of the subject property.

10. In keeping with my contractual obligation, in November 2004, I applied for a rezone from Agricultural to R-7 on the north 80 acre parcel. After public hearings a recommendation for approval from the P&Z was made to the Board of Commissioners. Real Estate Broker/ P&Z Member called me and told me he had spoken with other P&Z members after the recommendation for approval was made and told me I would receive an approval for a subdivision. He also informed me that the terms of my Purchase & Sales Agreement to purchase subject property were different than what my I had submitted to him in writing and that I would either have to change my application to be for Agricultural Transition zoning or the seller wanted out of the transaction. Smith further told me the Board of Commissioners would not approve rezone to the residential zone. Subsequently I had an “Executive Meeting” with the Camas County Board of Commissioner regarding this conflict of interest and ex parte action. Ken Backstrom told me at the beginning of the meeting that he was a very close personal friend of Ed Smith. Because of these various facts I withdrew my application for residential zoning at that

time. I then applied for Agricultural Transition Zoning on the north eighty 80 Acre parcel and received approval for the rezone from both the P&Z and the Board of Commissioners.

11. Defendant, Ed Smith, acting contrary to my best interest and attempting to interfere with my contractual rights caused me, by various statements made, to close on the eighty-one (81) acre parcel before completing the rezone.

12. On September 30, 2005, after closing the purchase on the eighty-one (81) acre parcel on September 28, 2005, I sold the parcel to Soldier Star Development, but retained valuable contractual rights related to said real property, including a percentage of potential resale profits and the right to list the property for sale, including commission compensation therefore.

13. Also on or about September 28, 2005, I exercised my option to purchase the twenty-nine (29) acre parcel and retain personal ownership of said parcel.

14. On or about March 28, 2007, I closed on sale of the eighty (80) acre parcel and on or about April 4, 2007, sold said parcel, but retained valuable contractual rights, including a percentage of potential resale profits and the right to list the property for sale, including commission compensation therefore.

15. On or about April 17, 2007, on behalf of Soldier Star Development, LLC, I re-filed an application to rezone one hundred eighty one and sixty-seventh (181.67) acres of the subject property from Agricultural (Ag Trans regarding the north 80) to Residential R-7.

16. On or about March 29, 2007, and April 18, 2007, Camas County, without following proper procedure or substance of LLUPA, adopted an Amended

Comprehensive Plan and Amended Zoning Ordinance that had the effect of up zoning approximately twenty thousand (20,000) acres of real property in Camas County and down zoning the approximate one hundred sixty (160) acres; the latter in which I hold an economic interest.

17. During the process of revising the Comprehensive Plans, Land Use Maps, Zoning Ordinance & Zoning Maps the conflict of interest became more evident and aggressive on Ed Smith's part in the process. It became clear that he was against me receiving the residential zoning on the property I had purchased through him acting as a dual agent. Ed Smith became Chairman of P&Z and ran and controlled the meetings. He made it very clear, which is on tape and in writing that he wanted the 189 acres I purchased to have the density lowered on the land use map, which later became the zoning map. During the Public Hearings I made it clear via both my testimony and in writing that Ed Smith was not representing my desires and interest, that he had a fiduciary responsibility and contractual obligation to me, and that this conflict of interest needed to be addressed prior to any approval of the various plans and ordinances. The Board of Commissioners ignored my plea, and in fact during the last public hearing, Chairman Ken Backstrom (Ed Smith's close friend) stated it sounded like a personal issue to him and wasn't any of their concern.

18. Thereafter this Court entered an injunction prohibiting the processing of land use applications in Camas County relating to property that had been purportedly rezoned as a result of the above referenced ordinances.



19. Camas County thereafter on or about May 12, 2008 adopted a substantially identical amended Comprehensive Plan, Land Use Designation Map, Zoning Ordinance and Zoning Map as Resolutions 114 and 115 and Ordinance Nos. 157 and 159.

20. The 2006-2007 and 2008 Comprehensive Plans continue to identify the property in which I hold an interest as most appropriate for higher density residential development.

(a) 2006-2007: The northern part of the county is rough mountainous land and would be a poor area for development. The country is steep and subject to snow avalanche, as well as demanding heavy maintenance cost for roads and public utilities. The center of the valley has a high water table, and ground disposal of sewerage would often be difficult in anything other than large lots. To be adapted for urban use would require development patterns that would facilitate the treatment of effluent to secondary levels. The areas in Camas County most likely suited for higher density development are the areas adjacent to and north of the city of Fairfield, Soldier Creek, Three mile Creek, West Magic, and adjacent to existing development

(b) COMMUNITY DESIGN: Fairfield is the population center and is the location of the schools, library, and other government facilities. The city Area of Impact identifies the area where Fairfield has concerns about changes in land use. Residential growth will be encouraged in the cities Area of Impact and the corridor north to include the townsite of Soldier. This will consolidate community services and utilize the central water and sewer systems already in place.

(c) 2008: LAND USE: The northern part of the county is rough mountainous land and would be a poor area for development. The country is steep and subject to snow avalanche, as well as demanding heavy maintenance cost for roads and public utilities. The center of the valley has a high water table, and ground disposal of sewerage would often be difficult in anything other than large lots. To be adapted for urban use would require development patterns that would facilitate the treatment of effluent to secondary levels. The areas in Camas County most likely suited for higher density development are the areas adjacent to and north of the city of Fairfield to the Soldier township, Manard, Hill City, Corral, Blaine, and adjacent to West Magic

21. The Multi-Hazards Map adopted by Camas County Board of Commissioners for submission to FEMA prior to the time of the hearings showed the areas to the North, South & East of subject property to be in the projected Flood Zone and the subject

property not in the Flood Zone yet the subject property was not given residential zoning but property in the Flood Zone was designated for residential zoning.

22. The subject property is located on the only collector road (other than Highway 46) in Camas County. According to the 2006 Comprehensive Plan only 10 miles of a total of 322 miles of county roads are paved. The subject property is adjacent this collector road which is paved. The majority of property upzoned to allow for residential construction are adjacent gravel or dirt roads.

23. The effect of both the 2006 & 2008 zoning and land use designation amendments relative to the above referenced property in which I hold a valuable interest was to change the permitted density of the subject property to R-1 (1 unit per acre – versus the R-7, 7 units per acre). The R-7 district was eliminated in the zoning ordinance and a new zone of R-4 (4 units per acre) was created. To be clear the following (together with the map attached as an addendum to this Affidavit) completely describes the land use designation and zoning before and after the zoning amendments of 2006-2007 and 2008.

(a) Plaintiff owns in fee simple the following parcels of real property in Camas County as of May 20, 2008: a) 40+ acre parcel 770 E 240 N., b) 29 acre parcel west of Soldier Road and South of Baseline Road, c) Had owned (recently sold) lots 3 and 4 Blk 5 Homestead Subdivision, within an existing approved and platted subdivision of one acre lots.

(b) The above parcels of real property, in order were located within the named zoning district prior to and after the rezone process of 2006-2007 a) agricultural/ agricultural, b) agricultural/R1 c) AT/A5

(c) Plaintiff had a fee simple ownership interest in two (2) 80 acre parcels, in section 4, that were sold to third parties while retaining a contractual fiscal interest in the development, marketing, and building potential thereon. The north parcel, was zoned AT before and after the 2006-2007 rezone process. The southern parcel was rezoned from AG to RI as a result of the 2006-2007 zoning amendment process. Both parcels were included in the R-7 land use designation in the Comprehensive Plan Land Use Maps existing prior to the 2006-2007

Comprehensive Plan Amendments and R-1 land use designation in the post 2006-2007 Comprehensive Plan Land Use Map amendments

(d) Plaintiff holds a first right of refusal as to a 67 acre parcel in Section 4 that was rezoned from AG to RI as a result of the 2006-2007 zoning amendment process. This parcel was included in the R-7 land use designation in the Comprehensive Plan Land Use Map existing prior to the 2006-2007 Comprehensive Plan Amendments and R-1 land use designation in the post 2006-2007 Comprehensive Plan Land Use Map amendments.

(e) The parcels generally described in the two preceding paragraphs, were included in the R-7 land use designation in the Comprehensive Plan Land Use Map existing prior to the 2006-2007 Comprehensive Plan Amendments and R-1 land use designation in the post 2006-2007 Comprehensive Plan Land Use Map amendments.

(f) The 29 acre parcel described in paragraph 14 subparagraph b, was included in the R-7 land use designation in the Comprehensive Plan Land Use Map existing prior to the 2006-2007 Comprehensive Plan Amendments and R-1 land use designation in the post 2006-2007 Comprehensive Plan Land Use Map amendments.

24. The property located immediately to the north of the subject property was rezoned to R-4. Likewise, the property located immediately to the South of the subject property was rezoned to R-4. Other properties upzoned to High Density Residential Housing include large tracts of property near the old abandoned townsites of Corral (8 miles West of Fairfield – no current services), Hill City (15 miles West of Fairfield – no current services), Blaine (10 miles East of Fairfield – no current services) and Soldier – (just north and adjacent of subject property).

25. Property left out of the R-4 rezone included the property the east of the subject property, which was rezoned various densities ranging from R-1 (1 unit per acre) to Ag-10 (1 unit per 10 acres). Much of this property has limited access via gravel roads each mile. Nevertheless this large area of now residentially zoned property expansion expands three (3) miles to the east and two (2) miles to the north from Hwy 20, and all labeled as

Projected Flood Zone on the Camas County Multi-Hazards Mitigation Plan. The property immediately to the east (across Soldier Road) had also been labeled Residential (R-7) on the pre-amendment Land Use Map. However, that property was previously subdivided at one (1) unit per acre and sold through Ed Smith's competing real estate broker.

26. In summary, approximately 20,000 acres were rezoned to allow various densities of residential housing, which had previously been designated and zoned for agricultural use, which immediately created such a large supply of properly zoned property that this action alone lowered the value of the property (normal supply & demand market reaction). This over supply of residential property immediately diminished the demand on all residential property in general, yet increased values of property originally with a land use of agriculture only.

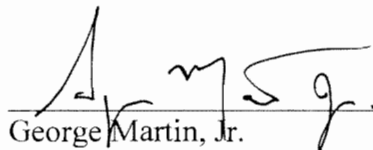
27. The upzoning of so many acres of property has an enormous effect on the market and value of real property, by increasing the supply of residential property, the sale price is drastically reduced.

28. At no time during the rezoning process was a rationale basis, serving any legitimate governmental interest, provided why the subject property in which Plaintiff holds a valuable interest, was not included in the newly created R-4 zoning district. Nor was any deliberation had the impact of rezone of such a large number of parcels on the cost of public services, or on water impacts. No public deliberations, regarding compliance with the Comprehensive Plan, were had.

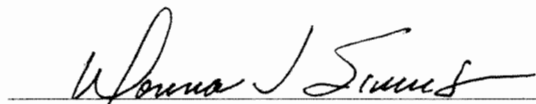
29. The animus against me by members of the P&Z and Board has been evident since I began to question the legality of procedure and wisdom of substance of the rezone

process. I have been cursed and threatened by Kevin Weir, a member of P&Z, refused service at local public establishments at the direction of Ken Backstrom, threatened and cursed by the Planning and Zoning Administrator, and told by the current Chair of the P&Z that he couldn't review an EPA submitted by Plaintiff with an open mind, finally the tape recorder was turned off during the public hearing for the 2008 zoning map, and instructed upon what comment could or could not be made regarding the substance of the proposals.

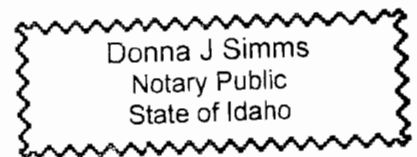
AFFIANT/PETITIONER

  
George Martin, Jr.

Subscribed and sworn to before me on this 1st day of April, 2009.

  
Notary Public

My Commission Expires: 10/20/14



CHRISTOPHER P. SIMMS  
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ISB# 7473

FILED  
4-1-09  
HR 4:40 P.M.  
ROLLIE BENNETT  
CLERK OF THE DISTRICT COURT  
HALL Bldg

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CAMAS**

GEORGE MARTIN, )  
)  
Plaintiff, )  
)  
and )  
)  
MARTIN CUSTOM )  
HOMES, L.L.C., )  
)  
Plaintiff, )  
v. )  
)  
ED SMITH, )  
)  
Defendant, )  
and )  
)  
CAMAS COUNTY, IDAHO, )  
By and through the duly elected )  
Board of Commissioners in )  
their official and individual )  
capacities, )  
)  
KEN BACKTROM, )  
BILL DAVIS, and )  
RON CHAPMAN, )  
)  
Defendants. )

Case No. CV-2008-40

PLAINTIFFS' STATEMENT OF  
MATERIAL FACT & SUBMITTAL  
OF AFFIDAVITS AND DOCUMENTS  
IN OPPOSITION TO SUMMARY  
JUDGMENT

PLAINTIFFS' STATEMENT OF MATERIAL FACT & SUBMITTAL OF  
AFFIDAVITS AND DOCUMENTS IN OPPOSITION TO SUMMARY  
JUDGMENT

COMES NOW Plaintiffs, George Martin and Martin Custom Homes, LLC by George Martin, and through counsel, Christopher P. Simms, files this, his Statement of Material Fact & Submittal of Affidavits and Documents in Opposition to Summary Judgment, and therefore states as follows:

1. Plaintiff requests that this Court take judicial notice of the proceedings commenced in The District Court for the Fifth Judicial District of the State of Idaho, in and for Camas County, under Case No. CV-2007-24, on May 4, 2007 upon which the Court issued *Findings of Fact, Conclusions of Law and Order Following Trial*, that incorporated Preliminary Injunctions entered on December 28, 2007 and April 2, 2008, titled *Decision on Requirements of a "Transcribable Record" and Other Records* and *Decision on Conflict of Interests Issue*. These orders are attached hereto as exhibits 1, 2 and 3 in the chronological order of entry. The Court's Orders referenced here address only declaratory judgment issues dealing with the Defendants actions in adopting amended zoning ordinances in 2006-2007.

2. The Court, in CV-2007-24, declared (a) the Camas County Comprehensive Plan adopted May 25, 2006, and March 29, 2007, as Resolution 96 null and void and (b) The Amendments to the Camas County Zoning Ordinance, adopted April 18, 2007, as Ordinance #153, and the Zoning Designation Map adopted March 29, 2007 as Ordinance #150, are all, and each of them null and void.

3. As a matter of fact, the Court, in CV-2007-24, found (a) The Board of Commissioners of Camas County failed to keep transcribable verbatim record of deliberations they engaged in, leading up to quasi-judicial public hearings, after they received recommendations from P&Z and had compiled at least part of the record. (b) In

recommending and passing Ordinance #153 and #150 at least one P&Z commissioner and one county commissioner acted with a conflict of interest as set forth in this court's Decision on Conflicts of Interest Issue filed April 2, 2008. (c) The P&Z failed to keep and maintain adequate records of the hearings, findings made, and actions taken by the commission, and failed to send a written recommendation to the Board as required by law. (d) The Board failed to make any written record of its decision. No findings of fact or conclusions of law were entered on a decision that purportedly affected a rezone of at least portions of the entire county, and that this is required of a quasi-judicial decision. (e) Camas County failed to follow proper legal procedure and provide proper notice in adopting the amended comprehensive plan and amended zoning ordinance. (d) Defendant Camas County acted without a reasonable basis in law or fact.

4. Based upon these findings, which Plaintiff maintains have a preclusive effect in this Court, further documentation on this host of issues will not be submitted and is not necessary at this stage of the proceedings.

5. Plaintiff continues to point to the absence of documentation in the record, or effort by Defendants to provide citation in tape recordings or through other evidence, that actual substantive deliberations, as required by LLUPA, ever occurred in adoption of the 2006-2007 Zoning Amendments or the re-enactment zoning amendments of 2008.

6. Defendants have not denied or submitted documentary evidence in response to the allegation in paragraph 12, 13, 14, 15 and 16 that the outcome of the process was pre-determined indicated illegal private deliberations as evidenced by draft dates, and absence of separate and distinct process for the Comprehensive Plan and Zoning Ordinance.



7. None of the Notices of Public Hearing contained a summary of the proposed amendments that would reasonably apprise an individual of the nature or location of the proposed land use zoning changes, as referenced in I.C. Sections 67-6509 & 67-6511.

8. All political subdivisions providing services within the planning jurisdiction, specifically City of Fairfield, and West Magic Fire District were not provided notice of public hearing. (See stipulation of counsel)

9. Alternative notice in the case of zoning district boundary change in that notice was not posted as required at the Camas County Courthouse or Fairfield City Hall as required under I.C. Section 67-6511 and Camas County No. 142.

10. The entire text, including the legal description of the rezoned land, or alternatively a summary that actually describes the amendments made was not published, as referenced in I.C. Section 31-715A

11. The above referenced procedural and substantive omissions in LLUPA and due process considerations are proven by a review of the attached Stipulation of Fact and Admission of Documentary Evidence, the Notices of Public Hearing, P&Z Recommendation Form, P&Z Findings of Fact, Agendas, Public Meeting/Hearing Minutes and Publications of Ordinances attached hereto as exhibits 4-24.

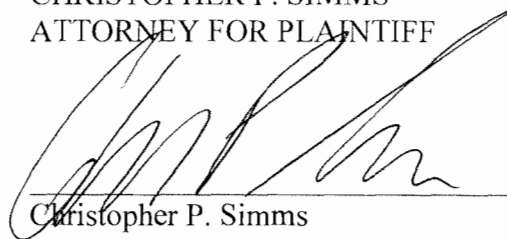
12. Plaintiff submitted notice of tort claim to Camas County and the individual defendants on September 7, 2007, which notice was ignored. (Attached hereto as Exhibit 25, Federal matter only)

13. Attached as Exhibit 25, is Plaintiff's Application for Temporary Restraining Order, Preliminary Injunction and Declaratory Relief, filed on May 20, 2008, in CV-07-

24 seeking relief from the 2008 zoning amendment re-enactments, less than one week after adoption. Plaintiff did not delay in pursuing a remedy.

25. Also attached are Camas County's 1997 Comprehensive Plan Land Use Map, and the post 2006 amendment Land Use Map, and for illustrative purposes close up depiction of the pre-2006 Zoning Map, post-2006 Zoning Map and 1997 Land Use Map as well as the Camas County Multi-Hazard Mitigation Map, showing the subject property outside of the floodplain hazard, marked as Exhibits 26-31.

CHRISTOPHER P. SIMMS  
ATTORNEY FOR PLAINTIFF

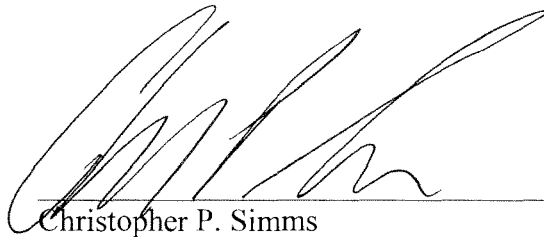


Christopher P. Simms

4.1.09  
Dated

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of April, 2009, a copy of PLAINTIFFS' STATEMENT OF MATERIAL FACT & SUBMITTAL OF AFFIDAVITS AND DOCUMENTS IN OPPOSITION TO SUMMARY JUDGMENT was served upon counsel via facsimile and addressed to Paul Fitzer, Attorney for Camas County Defendants 950 W. Bannock St., Ste 520, Boise, Idaho 83702, facsimile number 208 331 1202.



Christopher P. Simms

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Attorney at Law  
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ISB# 7473



FILED  
5-21-08  
HR 1:45 P.M.  
ROLLIE BENNETT  
CLERK OF THE DISTRICT COURT  
*[Signature]*

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN, )  
)  
Plaintiff, )  
)  
and )  
)  
MARTIN CUSTOM )  
HOMES, L.L.C., )  
)  
Plaintiff, )  
v. )  
)  
ED SMITH, )  
)  
Defendant, )  
and )  
)  
CAMAS COUNTY, IDAHO, )  
By and through the duly elected )  
Board of Commissioners in )  
their official capacity, )  
)  
KEN BACKTROM, )  
BILL DAVIS, and )  
RON CHAPMAN, )  
)  
Defendants. )

Case No. CV-07-24

STIPULATION AS TO FACTS  
AND ADMISSION OF DOCUMENTARY  
EVIDENCE

STIPULATION AS TO FACTS AND ADMISSION OF DOCUMENTARY  
EVIDENCE

Plaintiffs Statement of Material fact, etc.

Comes now the parties hereto, through counsel, and hereby stipulate to the following facts for purposes of submission of the legal issues herein;

#### DOCUMENTARY EVIDENCE

1. The parties stipulate to the admission into evidence of Plaintiff's Exhibits A - A29, B- B36, C - C11, D, E, F, G-G3, H-H12, I1-I4, J, K, L, M, N-N7, O, P & Q, all as included in Plaintiff's Trial Exhibit Binder.
2. The parties stipulate to the admission into evidence of Defendant's Exhibits A 1 through A18, B19-67, C68 -224, D226-226, E227-238, F239-286, G287-332, H333, I336-343, J344-420, K421-423, L424-425, M426-428, N429-497, O498, P499-500, Q501-570, R571-854 and S855-870, all as included in the Defendant's Trial Exhibit Binder pages 1-870.

#### STIPULATION OF FACTS

3. The parties stipulate that the Defendant's Exhibits admitted into evidence, as referenced in paragraph 2 above, comprise the entire administrative record in possession of Camas County.
4. The Planning and Zoning Commission nor the Board of Commissioners <sup>PJK, CPS</sup> ~~other than that found in the record~~ generated or considered new studies or new data in adoption of the Comprehensive Plans of 2006 or 2007. The studies and data within the 1997 Comprehensive Plan was the data and information considered by the Planning and Zoning Commission and Board of Commissioners in adopting the Plan.
5. Although no independent formal written recommendation from the Planning and Zoning Commission to the Board of County Commissioners to adopt the Comprehensive Plan and Land Use Map, in 2006 or 2007, Defendant submits

STIPULATION AS TO FACTS AND ADMISSION OF DOCUMENTARY EVIDENCE

2

Plaintiff's statement of Material fact, etc.

1166

that maps, notes and other materials in the record submitted complies with any legal requirements.

6. No independent formal written recommendation from the Planning and Zoning Commission to the Board of County Commissioners to adopt the amended Zoning Ordinance or Zoning Designation Map exist. Defendant submits that a draft Ordinance and draft Map were transmitted to the Board of Commissioners and satisfy any legal requirements.
7. The Board of County Commissioners did not generate any independent formal written record of decision of adoption of Ordinance 150 or 153, other than the Ordinance itself.
8. Legal Notice of Public Hearing, pursuant to Camas County Ordinance 142 was posted at all designated locations except the City of Fairfield City Hall. Notice was posted inside, not outside the Camas County Courthouse.
9. No written verification exists regarding Legal Notice of Public Hearing, pursuant to IC 67-6509, to political subdivisions providing services within the planning area, as to Planning and Zoning Commission meetings or hearings.
10. At the Board of County Commissioner level Legal Notice of Public Hearing, pursuant to IC 67-6509, was purportedly mailed to all political subdivisions providing services within the planning area, except West Magic Fire Protection District and the City of Fairfield. No written verification of notice exists.  
CP 11/15/16  
INDIVIDUAL
11. A Legal descriptions of the various zoning designations on the 2006-2007 Comprehensive Plan, Land Use Map, Zoning Ordinance and Zoning

STIPULATION AS TO FACTS AND ADMISSION OF DOCUMENTARY  
EVIDENCE

3

Plaintiff's statement of Material Fact.

167

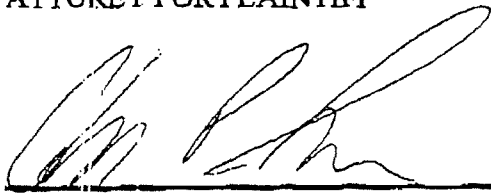
Designation Map were not considered in adoption of same nor published with the Ordinances.

12. Publication of Zoning Ordinance 153 adopted April 18, 2007 did not include any legal descriptions or map. The publication directed the reader to find the full text of the ordinance at the Planning and Zoning Office during regular office hours.
13. Publication of the Zoning Designation Map Ordinance No 150 adopted March 29, 2007 did not include any legal descriptions or map.
14. Plaintiff owns in fee simple the following parcels of real property in Camas County as of May 20, 2008: a) 40+ acre parcel 770 E 240 N., b) 29 acre parcel west of Soldier Road and South of Baseline Road, c) lots 3 and 4 Blk 5 Homestead Subdivision, within an existing approved and platted subdivision of one acre lots.
15. The above parcels of real property, in order were located within the named zoning district prior to and after the rezone process of 2006-2007 a) agricultural/ agricultural, b) agricultural/R1 c) AT/A5
16. Plaintiff had a fee simple ownership interest in two (2) 80 acre parcels, in section 4, that were sold to third parties while retaining a contractual fiscal interest in the development, marketing, and building potential thereon. The north parcel, was zoned AT before and after the 2006-2007 rezone process. The southern parcel was rezoned from AG to <sup>R1</sup> as a result of the 2006-2007 zoning amendment process.

17. Plaintiff holds a first right of refusal as to a 67 acre parcel in Section 4 that was rezoned from AG to <sup>C<sup>9</sup> 34</sup> R1 as a result of the 2006-2007 zoning amendment process.
18. The parcels generally described in the two preceding paragraphs, numbered 16 and 17, were included in the R-7 land use designation in the Comprehensive Plan Land Use Map existing prior to the 2006-2007 Comprehensive Plan Amendments and R-1 land use designation in the post 2006-2007 Comprehensive Plan Land Use Map amendments.
19. The 29 acre parcel described in paragraph 14 subparagraph.b, was included in the R-7 land use designation in the Comprehensive Plan Land Use Map existing prior to the 2006-2007 Comprehensive Plan Amendments and R-1 land use designation in the post 2006-2007 Comprehensive Plan Land Use Map amendments.
20. The two tape series labled March 26, 2007 also includes an audio recording of the March 27, 2007 deliberative proceedings at Board of Commissions meeting of those same dates.

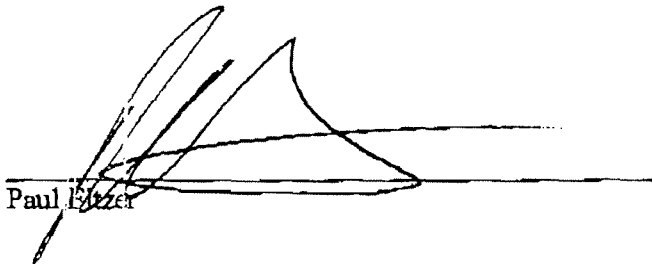


CHRISTOPHER P. SIMMS  
ATTORNEY FOR PLAINTIFF



Christopher P. Simms

PAUL FITZER  
MOORE, SMITH, BUXTON & TURKE, ATTORNEYS FOR DEFENDANT



STIPULATION AS TO FACTS AND ADMISSION OF DOCUMENTARY  
EVIDENCE

6

Plaintiffs Statement of Material Fact

170

CHRISTOPHER P. SIMMS  
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ISB# 7473

Attorney for Plaintiff

FILED  
10-28-08  
HR 11:25 AM.

ROLLIE BENNETT  
CLERK OF THE DISTRICT COURT  
*Bobbie D. Walters*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN, )  
 )  
Plaintiff, )  
 )  
and )  
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MARTIN CUSTOM )  
HOMES, L.L.C., )  
 )  
Plaintiff, )  
v. )  
 )  
 )  
CAMAS COUNTY, IDAHO, )  
By and through the duly elected )  
Board of Commissioners in )  
their official capacity, )  
 )  
KEN BACKTROM, )  
BILL DAVIS, and )  
RON CHAPMAN, )  
 )  
Defendants. )  
 )

Case No. CV-08-40

STIPULATION AS TO FACTS  
AND ADMISSION OF DOCUMENTARY  
EVIDENCE

STIPULATION AS TO FACTS AND ADMISSION OF DOCUMENTARY  
EVIDENCE

Plaintiffs' Statement of Material Fact

Comes now the parties hereto, through counsel, and hereby stipulate to admission of the following exhibits into evidence and the following facts for purposes of submission of the legal issues herein;

#### DOCUMENTARY EVIDENCE

A. The parties stipulate to the admission into evidence of each of the following Plaintiff's Exhibits

- Exhibit A -- Published Notice of Planning and Zoning Commission Hearing on Zoning Ordinance and Comprehensive Plan, Camas Courier April 2, 2008, for hearing on April 21, 2008.
- Exhibit B -- Published Notice of Board of County Commissioners Hearing on Zoning Ordinance and Comprehensive Plan, Camas Courier April 23, 2008, for hearing on May 12, 2008.
- Exhibit C Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Zoning Map.
- Exhibit D Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Zoning Ordinance
- Exhibit E Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Comprehensive Plan Map.

- Exhibit F Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Comprehensive Plan.
- Exhibit G – Publication of adoption on May 12, 2008 of Zoning Ordinance No. 157, and Zoning Map Ordinance No. 158 Board of County Commissioners Hearing published in the Camas Courier on May 14, 2008.
- Exhibit H – Decision on Requirements of a “Transcribable Verbatim Record” and Other Records for Purposes of Preliminary Injunction dated December 28, 2007 in Case No. CV-07-24.
- Exhibit I – Order Following Contempt Hearing and Order Expanding Preliminary Injunction dated March 11, 2008 in Case No. CV-07-24.
- Exhibit J – Decision on Conflicts of Interests issue for Purposes of Preliminary Injunction dated April 2, 2008 in Case No. CV-07-24.
- Exhibit K – Minutes of April 21, 2008 Planning and Zoning Public Hearing Minutes wherein Resolutions 114 and 115 and Ordinance 157 and 158 recommending adoption of an Amended Comprehensive Plan, Land Use Map, Zoning Ordinance and Zoning Designation Map.
- Exhibit L – Minutes of April 21, 2008 Board of County Commissioners Public Hearing Minutes.
- 

#### STIPULATION OF FACTS

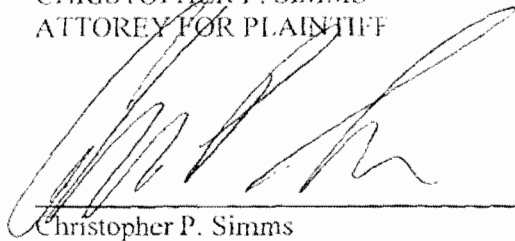
- B. The Planning and Zoning Commission nor the Board of Commissioners generated or considered new studies in adoption of the Comprehensive Plans of 2008.
- C. Legal Notice of Public Hearing, was posted at:
- a. Camas/Gooding County Line on US 46;
  - b. East and West Camas County Lines on US 20;
  - c. Camas County Annex;
  - d. Entry Road to West Magic Highway 75;
  - e. Soldier road from the North
- Notice was not posted at Fairfield City Hall.**
- D. At the Board of County Commissioner level Legal Notice of Public Hearing, pursuant to IC 67-6509, was purportedly mailed to all political subdivisions providing services within the planning area. Legal Notice of Public Hearing was not mailed ~~by~~<sup>to</sup> the City of Fairfield. No written verification of notice exists for service to the West Magic Fire Protection District.
- E. Individual Legal descriptions of the various zoning designations on the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance and Zoning Designation Map were not considered in adoption of same nor published with the Ordinances.
- F. Publication of Zoning Ordinance 157 adopted May 12, 2008 did not include any legal descriptions. The publication provided: [t]he full text of Ordinance 157 is available for public inspection during normal office hours at the office of the Camas County Planning and Zoning Administrator.

- G. Publication of the Zoning Designation Map Ordinance No 158 adopted May 12, 2008 did not include any legal descriptions.
- H. Plaintiff owns in fee simple the following parcels of real property in Camas County as of May 12, 2008: a) 40+ acre parcel 770 E 240 N., b) 29 acre parcel west of Soldier Road and South of Baseline Road, c) lots 3 & 4 Blk 5 Homestead Subdivision, within an existing approved and platted subdivision of one acre lots.
- I. The above parcels of real property, in order were located within the named zoning district prior to and after the rezone process of 2006, 2007 & 2008 a) agricultural/ agricultural, b) agricultural/R1 c) AT/A5
- J. Plaintiff had a fee simple ownership interest in two (2) 80 acre parcels. in section 4, that were sold to third parties while retaining a contractual fiscal interest in the development, marketing, and building potential thereon. The north parcel, was zoned AT before and after the 2006, 2007 & 2008 rezone process. The southern parcel was rezoned from AG to R1 as a result of the 2006, 2007 & 2008 zoning amendment process.
- K. Plaintiff holds a first right of refusal as to a 67 acre parcel in Section 4 that was rezoned from AG to R1 as a result of the 2006, 2007 & 2008 zoning amendment process.
- L. The parcels generally described in the two preceding paragraphs, numbered and I and J, were included in the R-7 land use designation in the Comprehensive Plan Land Use Map existing prior to the 2006 Comprehensive

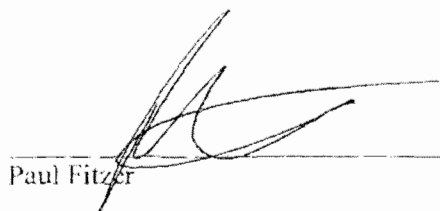
Plan Amendments and R-1 land use designation in the post 2006 Comprehensive Plan Land Use Map amendments.

M. The 29 acre parcel described in paragraph H subparagraph b, was included in the R-7 land use designation in the Comprehensive Plan Land Use Map existing prior to the 2006 Comprehensive Plan Amendments and R-1 land use designation in the post 2006 Comprehensive Plan Land Use Map amendments.

CHRISTOPHER P. SIMMS  
ATTORNEY FOR PLAINTIFF

  
\_\_\_\_\_  
Christopher P. Simms

PAUL FITZER  
MOORE, SMITH, BUXTON & TURKE, ATTORNEYS FOR DEFENDANT

  
\_\_\_\_\_  
Paul Fitzer

STIPULATION AS TO FACTS AND ADMISSION OF DOCUMENTARY  
EVIDENCE

6

Plaintiffs Statement of Material Fact

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## Legal Advertisements Legal Advertisements Legal Advertisements

### NOTICE OF PUBLIC HEARING FOR CAMAS COUNTY ZONING ORDINANCE AND COMPREHENSIVE PLAN

NOTICE IS HEREBY GIVEN: on Monday, the 21<sup>st</sup> day of April, 2008 at 5:00 p.m. or as soon thereafter as the matter may be heard, the Planning and Zoning Commission of Camas County will hold a public hearing at the Senior Citizen's Center, 127 West Willow, Fairfield, Idaho, to consider the draft of a new zoning ordinance and new comprehensive plan, in accordance with Section 67-6509 and 67-6511, Idaho Code. The purpose of this hearing is for the public as well as the Planning and Zoning Commission to consider drafts of a new zoning ordinance and a new comprehensive plan for Camas County and make recommendations concerning the drafts to the County Commissioners. Copies of the draft documents are available at the Camas County Planning and Zoning Office.

A general summary of the provisions of the zoning ordinance is as follows:

Article I	Title, Interpretation, and Enactment
Article II	Definitions
Article III	Administration
Article IV	Establishment and Purpose of Districts
Article V	Provisions for Official Zoning Map
Article VI	District Regulations
Article VII	Official Schedule of District Regulations
Article VIII	Official Height and Area Regulations
Article IX	Flood Plain Overlay Districts
Article X	Performance Standards
Article XI	Hillside and Foothill Areas Development
Article XII	Conditional Use Permits
Article XIII	Procedures for Planned Unit Developments
Article XIV	Non-Conforming Uses
Article XV	Appeal and Variance
Article XVI	Building Permits
Article XVII	Amendment
Maps	

A general summary of the provisions of the comprehensive plan is as follows:

Section I	Introduction
Section II	Population Analysis
Section III	Private Property Rights
Section IV	Schools and Transportation
Section V	Economic Development
Section VI	Land Use
Section VII	Agriculture
Section VIII	Natural Resources
Section IX	Hazardous Areas
Section X	Transportation
Section XI	Housing
Section XII	Recreation
Section XIII	Community Design
Section XIV	Special Areas or Sites
Section XV	Public Services, Facilities and Utilities
Section XVI	Implementation

Written comments will be received by the Planning & Zoning Administrator until 5:00 p.m. on April 17, 2008. Testimony at the hearing

may be limited to three minutes.

Services for persons with disabilities may be made available by calling the Planning & Zoning Administrator at 764-2046 three days in advance of the hearing.

Camas County Planning and Zoning Administrator

### NOTICE OF PUBLIC HEARINGS FOR CAMAS COUNTY COMPREHENSIVE PLAN MAP AND ZONING MAP

NOTICE IS HEREBY GIVEN: on Monday, the 21<sup>st</sup> day of April, 2008 at 5:00 p.m. or as soon thereafter as the matter may be heard, the Planning and Zoning Commission of Camas County will hold public hearings at the Senior Citizen's Center, 127 West Willow, Fairfield, Idaho, to consider drafts of a new comprehensive plan map and a new zoning map for the County of Camas, in accordance with Section 67-6509 and 67-6511, Idaho Code. The purpose of these hearings is for the public as well as the Planning and Zoning Commission to consider drafts of a new zoning map and comprehensive plan map and make recommendations concerning the drafts to the County Commissioners. Copies of the draft maps are available at the Camas County Planning and Zoning Office. A copy of the draft maps are attached to this notice.

Written comments will be received by the Planning & Zoning Administrator until 5:00 p.m. on April 17, 2008. Testimony at the hearing may be limited to three minutes.

Services for persons with disabilities may be made available by calling the Planning & Zoning Administrator at 764-2046 three days in advance of the hearing.

Camas County Planning & Zoning Administrator

### NOTICE OF OPENING

The Planning and Zoning Commission has an opening for a Planning and Zoning Commissioner. Applications are available at the Planning and Zoning Office at Courthouse Annex 517 Soldier Rd., Fairfield, ID 83327 or at the County Court House Monday through Friday from 8:30 AM until 5:00 PM.

Please contact Dwight Butlin or Megan Supernaugh at the Planning and Zoning office at 208-764-2046. EEOE

### Notice For Bids

The Camas County Cemetery Board will be accepting bids for maintenance on the four cemeteries until April 2nd, 2008. Persons wishing to bid need to have their own equipment to be able to mow, trim, spray, and do general upkeep in a timely manner as directed by the board. Maintenance will be done from May 2008 through October 2008.

Bids may be given to Linda Miller (Chairman) Route 1 Box 1130, Fairfield, Idaho 83327, phone 764-2560, or Linda Thomas (board member) P.O. Box 508, Fairfield, Idaho 83327, phone 764-2100.

Plaintiffs Statement of Material Fact

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**Legal Advertisements Legal Advertisements Legal Advertisements****NOTICE OF PUBLIC HEARING FOR  
CAMAS COUNTY ZONING ORDINANCE AND  
COMPREHENSIVE PLAN**

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*Camas County Planning and Zoning Administrator*

**NOTICE OF PUBLIC HEARINGS FOR  
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MAP AND ZONING MAP**

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DEFENDANT'S  
EXHIBIT  
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Plaintiff's Statement of Material Fact

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**Legal Advertisements Legal Advertisements Legal Advertisements****NOTICE OF PUBLIC HEARING FOR  
CAMAS COUNTY ZONING ORDINANCE AND  
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*Camas County Planning and Zoning Administrator*

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MAP AND ZONING MAP**

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*Camas County Planning & Zoning Administrator*

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**Notice For Bids**

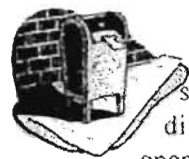
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DEFENDANT'S  
EXHIBIT  
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Plaintiff's Statement of Material Fact

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## ...Letters continued

I select few. I say this does not have to be that difficult, yes, time and effort and most important, open and honest government working with the community to seek solutions. So lets look ahead to the future, thinking of how it will be and work to make it happen. I see it this way and as a County Commissioner this is the direction I will go.

Sincerely

*Dave Konrad*

**FHS** **Family Health Services**  
 401 Camas Avenue West  
**764-2611**  
**Medical & Dental Care**  
*Sliding Scale fees available*

**OPEN:**  
 Mon. 2 to 7  
 Wed. 8:30 to 5  
 Thur. 2 to 7  
 Fri. 8:30 to 5

## Legal Advertisements Legal Advertisements Legal Advertisements

### NOTICE OF PUBLIC HEARING FOR CAMAS COUNTY ZONING ORDINANCE AND COMPREHENSIVE PLAN

NOTICE IS HEREBY GIVEN: on Monday, the 12th day of May, 2008 at 9:30 a.m. or as soon thereafter as the matter may be heard, the Camas County Board of Commissioners will hold a public hearing at the Senior Citizen's Center, 127 West Willow, Fairfield, Idaho, to consider a new zoning ordinance and new comprehensive plan, in accordance with Section 67-6509 and 67-6511, Idaho Code. The purpose of this hearing is for the public and the Board of Commissioners to consider the enactment of a new Zoning Ordinance and a new Comprehensive Plan to be adopted by Resolution for Camas County repealing all predecessor zoning ordinances and comprehensive plans. The recommendation of the Planning and Zoning Commission is to adopt the Zoning ordinance and the Comprehensive Plan as presented to the Board of Commissioners. Copies of the draft documents are available at the Camas County Planning and Zoning Office.

A general summary of the provisions of the zoning ordinance is as follows:

Article I	Title, Interpretation, and Enactment
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Section VI	Land Use
Section VII	Agriculture

Section VIII	Natural Resources
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Section X	Transportation
Section XI	Housing
Section XII	Recreation
Section XIII	Community Design
Section XIV	Special Areas or Sites
Section XV	Public Services, Facilities and Utilities
Section XVI	Implementation

Written comments will be received by the Planning & Zoning Administrator until 5:00 p.m. on May 7, 2008. Testimony at the hearing may be limited to three minutes.

Services for persons with disabilities may be made available by calling the Planning & Zoning Administrator at 764-2046 three days in advance of the hearing.

*Camas County Planning and Zoning Administrator*

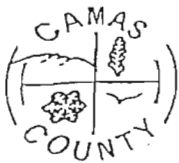
### NOTICE OF PUBLIC HEARINGS FOR CAMAS COUNTY COMPREHENSIVE PLAN MAP AND ZONING MAP

NOTICE IS HEREBY GIVEN: on Monday, the 12th day of May, 2008 at 9:30 a.m. or as soon thereafter as the matter may be heard, the Camas County Board of Commissioners will hold public hearings at the Senior Citizen's Center, 127 West Willow, Fairfield, Idaho, to consider drafts of a new comprehensive plan map and a new zoning map for the County of Camas, in accordance with Section 67-6509 and 67-6511, Idaho Code. The purpose of these hearings is for the public as well as the Board of Commissioners to consider drafts of a new zoning map and comprehensive plan map and to enact an ordinance and resolution adopting said Zoning Map and Comp Plan Map. The Planning and Zoning Commission has recommended approval of the maps as presented to the Board of Commissioners. Copies of the draft maps are available at the Camas County Planning and Zoning Office. A copy of the draft maps are attached to this notice.

Written comments will be received by the Planning & Zoning Administrator until 5:00 p.m. on May 7, 2008. Testimony at the hearing may be limited to three minutes.

Services for persons with disabilities may be made available by calling the Planning & Zoning Administrator at 764-2046 three days in advance of the hearing.

*Camas County Planning & Zoning Administrator*



Camas County Planning & Zoning  
P.O. Box 430  
Fairfield, Idaho 83327

## Recommendation Form

Date: April 22, 2008

**Action Taken: Recommend approval of proposed Comp Plan & Map, Zoning Ordinance and Map**

### Recommend Approval

Comments: The Camas County Planning and Zoning Commissioners recommend approval of the proposed draft Comprehensive Plan and associated map and the proposed draft Zoning Ordinance and associated map with the following recommendations:

1. Adopt the wording in the proposed draft Comprehensive Plan as presented in draft # 1 dated 3/10/08.
2. Adopt the proposed draft Comp Plan Land Use Map as presented in draft # 1 dated 3/27/08
3. Adopt the wording in the proposed draft Zoning Ordinance as presented in draft # 1 dated 3/10/08
4. Adopt the proposed draft Zoning Map as presented in draft # 1 dated 3/14/08 with revised print date of 4/1/08.

Marshall Ralph

Signed April 22, 2008 Date

Plaintiffs Statement of Material Fact

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Findings of Camas County  
Planning and Zoning Commission

April 22, 2008

RE: Camas County Comprehensive Plan Map  
Hearing date: April 21, 2008

FINDING OF FACTS

1. Notice of Public Hearing:
  - a. Published Notice: Camas Courier, 4/2/08, 4/9/08, 4/16/08
  - b. Letters to Agencies: 3/14/08
2. The administrator presented the proposed Comp Plan Map to the P & Z commission.
3. The map has been revised to reflect some changes in Camas County.
4. The proposed Comp Plan Map was prepared by the planning and zoning department.
5. The proposed comprehensive plan map was mailed to the following political subdivisions.
  - a. Camas county weed management.
  - b. Camas Soil Conservation District
  - c. Camas County Road and Bridge.
  - d. Idaho department of fish and game.
  - e. Camas County Sheriff.
  - f. Camas County School District
  - g. Frontier Telephone
  - h. Camas County fire Marshal
  - i. Idaho Power
  - j. Frosgren Associates, Inc.
  - k. South Central Health Department
  - l. Camas County Engineer at Galena Engineers.
6. Responses have been received from Camas County Road and Bridge, South Central District Health, Camas County Soil Conservation District, & Camas Creek Weed Management Cooperative.
7. Notices were posted at all county lines and all other required locations.
8. The Comp Plan map was amended to plan for the future growth of the county.
9. P&Z held a public hearing on April 21, 2008.

Plaintiffs Statement of Material Fact.

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10. Notice was published in the Camas Courier as required by State Statue 67-6509.
11. All requirements for providing notice of the public hearing as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.
12. All requirements for the conduct of public hearings as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.

It is the recommendation of the Camas County Planning and Zoning Commission that the Comprehensive Plan Map be approved and be presented to the Board of County Commissioners on April 22<sup>nd</sup>, 2008.

Marshall Ralph: Marshall Ralph  
Chairman, Camas County Planning and Zoning

Date: April 22, 2008



Findings of Camas County  
Planning and Zoning Commission

April 22, 2008

RE: Camas County Comprehensive Plan  
Hearing date: April 21, 2008

FINDING OF FACTS

1. Notice of Public Hearing:
  - a. Published Notice: Camas Courier, 4/2/08, 4/9/08, 4/16/08
  - b. Letters to Agencies: 3/14/08
2. The administrator presented the proposed Comp Plan to the P & Z commission.
3. The plan has been revised to reflect some changes in Camas County.
4. The proposed Comp Plan was prepared by the planning and zoning department.
5. The proposed comprehensive plan was mailed to the following political subdivisions.
  - a. Camas county weed management.
  - b. Camas Soil Conservation District
  - c. Camas County Road and Bridge.
  - d. Idaho department of fish and game.
  - e. Camas County Sheriff.
  - f. Camas County School District
  - g. Frontier Telephone
  - h. Camas County fire Marshal
  - i. Idaho Power
  - j. Frosgren Associates, Inc.
  - k. South Central Health Department
  - l. Camas County Engineer at Galena Engineers.
6. Responses have been received from Camas County Road and Bridge, South Central District Health, Camas County Soil Conservation District, & Camas Creek Weed Management Cooperative.
7. Notices were posted at all county lines and all other required locations.
8. The Comp Plan was amended to address specific needs of the county including overly zone districts.
9. P&Z held a public hearing on April 21, 2008.

Plaintiffs Statement of Material Fact

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10. Notice was published in the Camas Courier as required by State Statue 67-6509.
11. All requirements for providing notice of the public hearing as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.
12. All requirements for the conduct of public hearings as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.

It is the recommendation of the Camas County Planning and Zoning Commission that the Comprehensive Plan be approved and be presented to the Board of County Commissioners on April 22<sup>nd</sup>, 2008.

Marshall Ralph: Marshall Ralph  
Chairman, Camas County Planning and Zoning

Date: April 22, 2008



Finding of Facts and Conclusions of Law  
Camas County Planning and Zoning Commission

April 22, 2008

RE: Camas County Zoning Map  
Hearing date: April 21, 2008

FINDING OF FACTS

1. Notice of Public Hearing:
  - a. Published Notice: Camas Courier, 4/2/08, 4/9/08, 4/16/08
  - b. Letters to Agencies: 3/14/08
2. The administrator presented the proposed zoning map to the P & Z commission.
3. The map has been revised to reflect the proposed zoning in Camas County.
4. The proposed map is in accordance with the Comprehensive Plan and associated Land Use map.
5. The proposed map was prepared by Alpine Enterprises, Inc. at the direction of the planning and zoning department.
6. The proposed map, along with a copy of the proposed comprehensive plan and proposed zoning ordinance were mailed to the following political subdivisions.
  - a. Camas county weed management.
  - b. Camas Soil Conservation District
  - c. Camas County Road and Bridge.
  - d. Idaho department of fish and game.
  - e. Camas County Sheriff.
  - f. Camas County School District
  - g. Frontier Telephone
  - h. Camas County fire Marshal
  - i. Idaho Power
  - j. Frosgren Associates, Inc.
  - k. South Central Health Department
  - l. Camas County Engineer at Galena Engineers.
7. Responses have been received from Camas County Road and Bridge, South Central District Health, Camas County Soil Conservation District, & Camas Creek Weed Management Cooperative.
8. Notices were posted at all county lines and all other required locations.

9. The zoning map was amended to address spatial anomalies rezoning such areas to be designated as a conforming zone.
10. P&Z held a public hearing on April 21, 2008.
11. Notice was published in the Camas Courier as required by State Statue 67-6509.

#### CONCLUSIONS OF LAW

1. All requirements for providing notice of the public hearing as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.
2. All requirements for the conduct of public hearings as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.
3. The proposed amendment to the Zoning Map is consistent with the Comprehensive Plan, Land Use Map, and Zoning Ordinances for the County of Camas.

It is the conclusion of the Camas County Planning and Zoning Commission that the Zoning Map is in compliance with the Zoning Ordinance, Comprehensive Plan and Land Use Map and recommends approval to the Board of County Commissioners as presented on April 21<sup>st</sup>, 2008.

Marshall Ralph: Marshall Ralph  
Chairman, Camas County Planning and Zoning

Date:

April 22, 2008

Plaintiffs Statement of Material Fact

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Findings of Camas County  
Planning and Zoning Commission

April 22, 2008

RE: Camas County Zoning Ordinance  
Hearing date: April 21, 2008

FINDING OF FACTS

1. Notice of Public Hearing:
  - a. Published Notice: Camas Courier, 4/2/08, 4/9/08, 4/16/08
  - b. Letters to Agencies: 3/14/08
2. The administrator presented the proposed Zoning Ordinance to the P & Z commission.
3. The Ordinance has been revised to reflect some changes in Camas County including an overlay district, additional dwelling units and 40 acre parcels.
4. The proposed Zoning Ordinance was prepared by the planning and zoning department.
5. The proposed Zoning Ordinance was mailed to the following political subdivisions.
  - a. Camas county weed management.
  - b. Camas Soil Conservation District
  - c. Camas County Road and Bridge.
  - d. Idaho department of fish and game.
  - e. Camas County Sheriff.
  - f. Camas County School District
  - g. Frontier Telephone
  - h. Camas County fire Marshal
  - i. Idaho Power
  - j. Frosgren Associates, Inc.
  - k. South Central Health Department
  - l. Camas County Engineer at Galena Engineers.
6. Responses have been received from Camas County Road and Bridge, South Central District Health, Camas County Soil Conservation District, & Camas Creek Weed Management Cooperative.
7. Notices were posted at all county lines and all other required locations.

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8. The Zoning Ordinance was amended to reflect the correct zoning in subdivisions to eliminate as many non conforming lots as possible in the county.
9. P&Z held a public hearing on April 21, 2008.
10. Notice was published in the Camas Courier as required by State Statue 67-6509.
11. All requirements for providing notice of the public hearing as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.
12. All requirements for the conduct of public hearings as set forth in Title 67, Chapter 65 and ordinances of the County of Camas have been met.

It is the recommendation of the Camas County Planning and Zoning Commission that the Zoning Ordinance be approved and be presented to the Board of County Commissioners on April 22<sup>nd</sup>, 2008.

Marshall Ralph: Marshall Ralph Date: April 22, 2008  
Chairman, Camas County Planning and Zoning

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## NOTICE OF OPENING

The Planning and Zoning Commission has and opening for a Planning and Zoning Commissioner. Applications are available at the Planning and Zoning Office at Courthouse Annex 517 Soldier Rd., Fairfield, ID 83327 or at the County Court House Monday through Friday from 8:30 AM until 5:00 PM.

Please contact Dwight Butlin or Megan Supernough at the Planning and Zoning office at 208-764-2046. EEOE

## NOTICE OF PUBLIC HEARING FOR CAMAS COUNTY ZONING ORDINANCE AND COMPREHENSIVE PLAN

NOTICE IS HEREBY GIVEN: on Monday, the 12th day of May, 2008 at 9:30 a.m. or as soon thereafter as the matter may be heard, the Camas County Board of Commissioners will hold a public hearing at the Senior Citizen's Center, 127 West Willow, Fairfield, Idaho, to consider a new zoning ordinance and new comprehensive plan, in accordance with Section 67-6509 and 67-6511, Idaho Code. The purpose of this hearing is for the public and the Board of Commissioners to consider the enactment of a new Zoning Ordinance and a new Comprehensive Plan to be adopted by Resolution for Camas County repealing all predecessor zoning ordinances and comprehensive plans. The recommendation of the Planning and Zoning Commission is to adopt the Zoning ordinance and the Comprehensive Plan as presented to the Board of Commissioners. Copies of the draft documents are available at the Camas County Planning and Zoning Office.

A general summary of the provisions of the zoning ordinance is as follows:

Article I	Title, Interpretation, and Enactment
Article II	Definitions
Article III	Administration
Article IV	Establishment and Purpose of Districts
Article V	Provisions for Official Zoning Map
Article VI	District Regulations
Article VII	Official Schedule of District Regulations
Article VIII	Official Height and Area Regulations
Article IX	Flood Plain Overlay Districts
Article X	Performance Standards
Article XI	Hillside and Foothill Areas Development
Article XII	Conditional Use Permits
Article XIII	Procedures for Planned Unit Developments
Article XIV	Non-Conforming Uses
Article XV	Appeal and Variance
Article XVI	Building Permits
Article XVII	Amendment
Maps	

A general summary of the provisions of the comprehensive plan is as follows:

Section I	Introduction
Section II	Population Analysis
Section III	Private Property Rights
Section IV	Schools and Transportation
Section V	Economic Development
Section VI	Land Use
Section VII	Agriculture

## Notice For Bids

The Camas County Cemetery Board will be accepting bids for maintenance on the four cemeteries. Persons wishing to bid need to have their own equipment to be able to mow, trim, spray, and do general upkeep in a timely manner as directed by the board. Maintenance will be done from May 2008 through October 2008.

Bids may be given to Linda Miller (Chairman) Route 1 Box 1150, Fairfield, Idaho 83327, phone 764-2560, or Linda Thomas (board member) P.O. Box 508, Fairfield, Idaho 83327, phone 764-2100.

Section VIII	Natural Resources
Section IX	Hazardous Areas
Section X	Transportation
Section XI	Housing
Section XII	Recreation
Section XIII	Community Design
Section XIV	Special Areas or Sites
Section XV	Public Services, Facilities and Utilities
Section XVI	Implementation

Written comments will be received by the Planning & Zoning Administrator until 5:00 p.m. on May 7, 2008. Testimony at the hearing may be limited to three minutes.

Services for persons with disabilities may be made available by calling the Planning & Zoning Administrator at 764-2046 three days in advance of the hearing.

*Camas County Planning and Zoning Administrator*

## NOTICE OF PUBLIC HEARINGS FOR CAMAS COUNTY COMPREHENSIVE PLAN MAP AND ZONING MAP

NOTICE IS HEREBY GIVEN: on Monday, the 12th day of May, 2008 at 9:30 a.m. or as soon thereafter as the matter may be heard, the Camas County Board of Commissioners will hold public hearings at the Senior Citizen's Center, 127 West Willow, Fairfield, Idaho, to consider drafts of a new comprehensive plan map and a new zoning map for the County of Camas, in accordance with Section 67-6509 and 67-6511, Idaho Code. The purpose of these hearings is for the public as well as the Board of Commissioners to consider drafts of a new zoning map and comprehensive plan map and to enact an ordinance and resolution adopting said Zoning Map and Comp Plan Map. The Planning and Zoning Commission has recommended approval of the maps as presented to the Board of Commissioners. Copies of the draft maps are available at the Camas County Planning and Zoning Office. A copy of the draft maps are attached to this notice.

Written comments will be received by the Planning & Zoning Administrator until 5:00 p.m. on May 7, 2008. Testimony at the hearing may be limited to three minutes.

Services for persons with disabilities may be made available by calling the Planning & Zoning Administrator at 764-2046 three days in advance of the hearing.

*Camas County Planning and Zoning Administrator*

Plaintiffs Statement of Material Fact

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## NOTICE OF PUBLIC HEARING FOR CAMAS COUNTY ZONING ORDINANCE AND COMPREHENSIVE PLAN

NOTICE IS HEREBY GIVEN: on Monday, the 12th day of May, 2008 at 9:30 a.m. or as soon thereafter as the matter may be heard, the Camas County Board of Commissioners will hold a public hearing at the Senior Citizen's Center, 127 West Willow, Fairfield, Idaho, to consider a new zoning ordinance and new comprehensive plan, in accordance with Section 67-6509 and 67-6511, Idaho Code. The purpose of this hearing is for the public and the Board of Commissioners to consider the enactment of a new Zoning Ordinance and a new Comprehensive Plan to be adopted by Resolution for Camas County repealing all predecessor zoning ordinances and comprehensive plans. The recommendation of the Planning and Zoning Commission is to adopt the Zoning ordinance and the Comprehensive Plan as presented to the Board of Commissioners. Copies of the draft documents are available at the Camas County Planning and Zoning Office.

A general summary of the provisions of the zoning ordinance is as follows:

Article I	Title, Interpretation, and Enactment
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A general summary of the provisions of the comprehensive plan is as follows:

Section I	Introduction
Section II	Population Analysis
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Section IV	Schools and Transportation
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Section VI	Land Use
Section VII	Agriculture
Section VIII	Natural Resources
Section IX	Hazardous Areas
Section X	Transportation
Section XI	Housing
Section XII	Recreation
Section XIII	Community Design
Section XIV	Special Areas or Sites
Section XV	Public Services, Facilities and Utilities
Section XVI	Implementation

## NOTICE OF SCHOOL TRUSTEE ELECTION Camas County School District No. 121 Camas County, Idaho

Public Notice is hereby given according to law, and the requisit action of the Board of Trustees of Camas County School District No. 121, Camas County Idaho, that the annual school trustee election will be held on Tuesday, May 20, 2008.

Only those qualified electors residing in Trustee Zone No. 4 - Fairfield and Zone No. 5 - Blaine, may vote for a Zone No. 4 or 5 candidate. The purpose of said election shall be to elect one trustee to serve for a period of three years from the date of the election who resides within trustee Zone No. 4 and one trustee to serve for a period of three years from the date of the election who reside within trustee Zone No. 5.

Trustee Zone No. 4 and No. 5 are more specifically described as follows:

### Trustee Zone No. 4 - Fairfield Trustee Zone No. 5 - Blaine

As provided by Idaho Code, Section 33-502A no write-in vote shall be counted unless a declaration of intent has been filed with the District Clerk indicating that the person desires the office and is legally qualified to assume the duties of school trustee if elected. The declaration of intent shall be filed not later than fourteen (14) days before the day of election.

The polls will be open from 12:00 p.m. until 8:00 p.m. at the following locations:

### Gym Entrance at Camas County High School

An elector must be a registered voter who has resided in this state and in this school district at least thirty (30) days preceding the election.

Qualified electors who expect to be absent from the District on May 20, 2008, or who will be unable, because of physical disability or blindness, to go to a polling place, may vote by absentee ballot. Written application for an absentee ballot may be made to the Clerk of the Board of Trustees on a form made available at the District Office at 610 Soldier Road on Monday through Friday from 8:00 a.m. to 4:00 p.m. Such application must be made no later than 11:00 (one hour before polls open), May 20, 2008. Electors applying in person may obtain their ballots starting April 21, 2008. Electors applying by mail should submit their requests as soon as possible. The absentee ballot must be received by the Clerk no later than 8:00 p.m. on the day of the election.

By Order of the Board of Trustees.

Written comments will be received by the Planning & Zoning Administrator until 5:00 p.m. on May 7, 2008. Testimony at the hearing may be limited to three minutes.

Services for persons with disabilities may be made available by calling the Planning & Zoning Administrator days in advance of the hearing.

Camas County Planning and Zoning

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PLAINTIFF'S  
EXHIBIT

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**NOTICE OF PROPOSED REALTY ACTION  
FOR A COMPETITIVE OR DIRECT SALE**

DEPARTMENT OF AGRICULTURE  
Forest Service

**PUBLIC NOTICE OF REALTY ACTION  
FAIRFIELD ADMINISTRATIVE SITE SALE**

Notice is hereby given that the Forest Service, United States Department of Agriculture, is proposing to sell the lands identified below at not less than the market value pursuant to the Forest Service Facilities Realignment Act of 2005, Section 504(d)(4).

The proposal for sale includes the following lands and interest in lands under the jurisdiction of the Forest Service:

Sawtooth National Forest  
Camas County, State of Idaho

Boise Meridian  
T. 1 S., R. 14 E., Sec. 9.  
Lots 11 to 27, Block 16, Village of Fairfield.

The area described contains approximately 1.22 acres.

The property consists of one bunkhouse, one "Ranger's" house, one 2-story employee house, and a warehouse. The bunkhouse, converted from the original Ranger office, is in good condition and served by propane heat and city services. The "Ranger's" house is in good condition with yard and trees. The 2-story employee house, which was probably the original ranger house, is in good condition. Garages are in good condition where in place. The warehouse is of fairly new construction.

The property includes lawn areas for dwellings and bunkhouse and trees of various species. There is a fence around the south side of the property. A small open area east of the bunkhouse was the horse pasture when the site was used as a ranger station.

Paved streets are located on the north, west, and south sides of the property. Graveled access easements (alleys) are located to the east and through the center of the property.

The mineral estate will be included in the estate to be sold.

The property may be sold directly to an identified purchaser or may be sold under competitive bidding procedures. The method of sale will be determined at a later date. The sale will be subject to valid existing rights and encumbrances of record. The Forest Service may also include in the conveyance any reservation necessary to protect the interests of the United States. Specific terms of the sale will be provided in an Offer to Sell which will be made after all environmental studies and other required analysis are completed and the final decision to sell the property is made.

Federal law requires purchasers to be U.S. citizens, 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity, including but not limited to associations or partnerships, capable of holding prop-

**NOTICE OF PUBLIC HEARINGS FOR  
CAMAS COUNTY COMPREHENSIVE PLAN  
MAP AND ZONING MAP**

NOTICE IS HEREBY GIVEN: on Monday, the 12th day of May, 2008 at 9:30 a.m. or as soon thereafter as the matter may be heard, the Camas County Board of Commissioners will hold public hearings at the Senior Citizen's Center, 127 West Willow, Fairfield, Idaho, to consider drafts of a new comprehensive plan map and a new zoning map for the County of Camas, in accordance with Section 67-6509 and 67-6511, Idaho Code. The purpose of these hearings is for the public as well as the Board of Commissioners to consider drafts of a new zoning map and comprehensive plan map and to enact an ordinance and resolution adopting said Zoning Map and Comp Plan Map. The Planning and Zoning Commission has recommended approval of the maps as presented to the Board of Commissioners. Copies of the draft maps are available at the Camas County Planning and Zoning Office. A copy of the draft maps are attached to this notice.

Written comments will be received by the Planning & Zoning Administrator until 5:00 p.m. on May 7, 2008. Testimony at the hearing may be limited to three minutes.

Services for persons with disabilities may be made available by calling the Planning & Zoning Administrator at 764-2046 three days in advance of the hearing.

*Camas County Planning & Zoning Administrator*

erty in the State. Proof of qualification to purchase the property will be required.

Additional detailed information, including complete property description, maps, list of reservations and encumbrances, etc. is available for review during regular business hours at the U.S. Forest Service, Fairfield Ranger District, Fairfield, ID. For further information contact Jack Haddox, Idaho/Wyoming Land Zone at the above address or by phone at (208) 557-5796. Parties who may be interested in purchasing the property, or wish to offer comments related to the proposed sale, are encouraged to contact the Forest Service.

For a period of 30 days from the date of publication of this notice the general public and interested parties may submit comments to:

USDA-Forest Service  
Sawtooth National Forest, Fairfield Ranger District  
P.O. Box 189  
Fairfield, ID 83327  
Attn: Mike Dettori, District Ranger

Or submit comments via e-mail to:  
comments-intermtm-sawtooth-fairfield@fs.fed.us

*Jane P. Kollmeyer*  
Forest Supervisor, Sawtooth National Forest

Date: April 30, 2008

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**AGENDA**  
CAMAS COUNTY BOARD OF COUNTY COMMISSIONER'S MEETING  
AT THE SENIOR CITIZEN'S CENTER, 127 WEST WILLOW, FAIRFIELD, IDAHO  
May 12, 2008

9:00 AM - Closing (as time permits)

- \*Bills presented for consideration & approval
- \*Correspondence & committee reports
- \*Executive session as needed
- \*Review & discuss Camas County Personnel Policy Manual
- \*Vote on appointment to the South Central District Health Board
- \*Sign assignment to the Catastrophic Health Care Cost Program for Indigent Case # 64
- \*Discuss and sign County Fund Certification for ISDA one-time Noxious Weed Program funds

9:00 AM

- \*Call to order
- \*Reading of the minutes

9:30 AM

- \*Public Hearing to consider a new Comprehensive plan
- \*Public Hearing to consider a new Comprehensive plan map
- \*Public Hearing to consider a new Zoning Ordinance
- \*Public Hearing to consider a new Zoning Map
- \*Deliberate and adopt, if appropriate, a new Comprehensive plan
- \*Deliberate and adopt, if appropriate, a new Comprehensive Plan Map
- \*Deliberate and adopt, if appropriate, a new Zoning Ordinance
- \*Deliberate and adopt, if appropriate, a new Zoning Map
  
- \*Deliberate and adopt, if appropriate, an ordinance to rescind the current Emergency moratorium (Ordinance #155)

\*If all agenda items are not covered on May 12, 2008, the meeting will be adjourned to another date for completion of the agenda.

*\* DISCUSS & ACT ON A PROPOSED  
LAW SUIT SETTLEMENT*

*Plaintiffs' Statement of Material Fact. 193*





FIRST DAY OF THE REGULAR SESSION  
OF THE CAMAS COUNTY COMMISSIONERS  
5-12-08

The meeting was called to order at 9:08 am.

Present were Chairman, Ken Backstrom, Ron Chapman, Bill Davis, Stephanie Bonney, Dwight Butlin, Megan Supernaugh, and Clerk, Rollic Bennett.

The Board reviewed the agenda. Ken asked to add a presentation of information by staff to the agenda. 2<sup>nd</sup> by Bill. Unanimous.

The minutes of 4-14, 4-22 and 4-28 were read. Bill moved to approve the minutes as read. 2<sup>nd</sup> by Ron. Unanimous.

The Board discussed the County Fund Certification for ISDA one time Noxious Weed Program funds. Ron moved to approve and authorize the Chairman to sign. 2<sup>nd</sup> by Bill. Unanimous.

Stephanie Bonney gave an overview of the Planning & Zoning issues on the agenda for today's meeting.

The Board recessed at 9:37 am.

Reconvened at 9:45 am.

Ken Backstrom comments on the procedure for the Public Hearings.

The Board held a Public Hearing on the proposed Comprehensive Plan at 9:50 am. The Board asked for testimony.

The Board held a public hearing on the Land Use Map at 10:35 am. Dwight Butlin comments. The Board accepted public testimony.

The Board recessed at 11:03 am.

The Board reconvened at 11:20 am.

A Public Hearing on the proposed Zoning Ordinance was held at 11:20 am. Dwight Butlin commented on the proposed changes. The Board accepted public testimony. The Public hearing closed at 11:52 am.

Stephanie Bonney commented on what a land use map is and what the procedure will entail.

Ken Backstrom explained what property he owned that may involve a conflict of interest and recused himself from the proceedings.

Bill Davis explained what property he owned that may create a conflict of interest and recused himself from the proceedings. Ron Chapman took over as acting Chairman.

Dwight Butlin made comments on the proposed Zoning Map.

The Board accepted public testimony.

The Board recessed at 12:15 pm.

The Board reconvened at 12:16 pm.

The Board continued public testimony.

The Public Hearing closed at 12:35 pm.

The Board recessed at 12:35 pm until 1:30 pm.

The Board reconvened at 1:36 pm.

Ken moved to go into executive session pursuant to IC 67-2345(1)(D).

2<sup>nd</sup> by Bill. Roll call 5 ayes

The Board came out of executive session at 1:55 pm.

Plaintiffs Statement of Material Fact

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Ken moved to amend the agenda to discuss and act on a proposal for lawsuit settlement of case CV-2007-24. 2<sup>nd</sup> by Bill. Unanimous.

Ron moved to deny the offer to settle the lawsuit. 2<sup>nd</sup> by Bill. Unanimous.

The Board deliberated on the proposed Comprehensive Plan. Bill moved to adopt The Comprehensive Plan. Bill rescinded his motion. Bill moved to adopt Resolution #114, adopting the 2008 Comprehensive Plan. 2<sup>nd</sup> by Ron. Unanimous.

The Board deliberated on the Comprehensive Plan Land Use Map. Bill moved to adopt Resolution #115, adopting the 2008 Comprehensive Plan Land Use Designation Map. 2<sup>nd</sup> by Ron. Unanimous.

The Board deliberated on the proposed 2008 Zoning Ordinance. Ron moved to adopt Ordinance #157, adopting the 2008 Zoning Ordinance. 2<sup>nd</sup> by Bill. Unanimous.

Ken Backstrom and Bill Davis recused themselves from deliberation on the 2008 Zoning Designation Map.

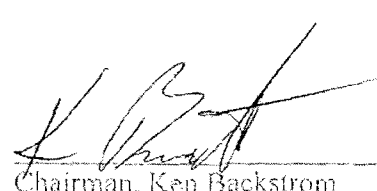
Ron Chapman deliberated on the 2008 Zoning Designation Map. Ron moved to adopt Ordinance #158, adopting the 2008 Zoning Designation Map. Ron voted aye.

The Board deliberated on rescinding Ordinance #155, declaring an emergency moratorium. Ron moved to adopt Ordinance #159 repealing Ordinance #155, establishing an emergency moratorium. 2<sup>nd</sup> by Bill. Unanimous.

The Board reviewed the bills. Bill moved to pay the bills. 2<sup>nd</sup> by Ron. Unanimous. Bill moved to adjourn at 4:20 pm. 2<sup>nd</sup> by Ron. Unanimous.

ATTEST

  
Clerk, Rolfe Bennett

  
Chairman, Ken Backstrom

Plaintiffs Statement of Material Fact

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### 2008 ZONING ORDINANCE ORDINANCE NO. 157

AN ORDINANCE OF THE CAMAS COUNTY BOARD OF COMMISSIONERS, CAMAS COUNTY, IDAHO, REPEALING ALL PREVIOUS ZONING ORDINANCES; PROVIDING ZONING REGULATIONS; TITLE, INTERPRETATION, AND ENACTMENT; DEFINITIONS; ADMINISTRATION; ESTABLISHMENT AND PURPOSE OF DISTRICTS; DISTRICT REGULATIONS; OFFICIAL SCHEDULE OF DISTRICT REGULATIONS; OFFICIAL HEIGHT AND AREA REGULATIONS; FLOOD PLAIN OVERLAY DISTRICTS; PERFORMANCE STANDARDS; HILLSIDE AND FOOTHILL AREAS DEVELOPMENT; CONDITIONAL USE PERMITS; PROCEDURES FOR PLANNED UNIT DEVELOPMENTS; NON-CONFORMING USES; APPEAL AND VARIANCE; BUILDING PERMITS; AMENDMENT PROCEDURES; AFFIRMING THAT PRESCRIBED NOTICE AND HEARING REQUIREMENTS WERE MET IN ACCORDANCE WITH TITLE 67, CHAPTER 65, IDAHO CODE; ADOPTING AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, following a public hearing held by the Camas County Planning and Zoning Commission, the County Commissioners received a recommendation from the Planning and Zoning Commission on April 22, 2008, to adopt a new Zoning Ordinance, and

WHEREAS, after sending mailings, holding public meetings and public hearings, and providing legal notice, all according to law, the County Commissioners of Camas County, Idaho, voted to approve the 2008 Zoning Ordinance; and

WHEREAS, the Camas County Commissioners hereby find that the proposed 2008 Zoning Ordinance complies with all provisions of the Idaho Code; and

WHEREAS, the Camas County Commissioners intend to repeal all previous zoning ordinances and adopt the 2008 Zoning Ordinance as the current Zoning Ordinance for Camas County,

**NOW THEREFORE BE IT ORDAINED BY THE CAMAS COUNTY COMMISSIONERS OF CAMAS COUNTY, IDAHO:**

Section 1: Repeals all previous zoning ordinances and amendments.

Section 2: Adopts and enacts this Ordinance, to be known as the 2008 Zoning Ordinance, hereby attached as Exhibit A, of Camas County, which contains the following chapters:

Article I	Title, Interpretation, and Enactment
Article II	Definitions
Article III	Administration
Article IV	Establishment and Purpose of Districts
Article V	Provisions for Official Zoning Map
Article VI	District Regulations
Article VII	Official Schedule of District Regulations
Article VIII	Official Height and Area Regulations
Article IX	Flood Plain Overlay Districts
Article X	Performance Standards
Article XI	Hillside and Foothill Areas Development
Article XII	Conditional Use Permits

Article XIII	Procedures for Planned Unit Developments
Article XIV	Non-Conforming Uses
Article XV	Appeal and Variance
Article XVI	Building Permits
Article XVII	Amendment

Section 3: This ordinance shall be in full force and become effective upon adoption and publication as provided by law.

Section 4: The full text of Ordinance No. 157 is available for public inspection during normal office hours at the office of the Camas County Planning and Zoning Administrator.

ADOPTED by the Camas County Commissioners of Camas County, Idaho, this 12th day of May, 2008.

*By Ken Backstrom, County Commissioner*

*By Ron Chapman, County Commissioner*

*By Bill Davis, County Commissioner*

ATTEST: *Rollie Bennett, County Clerk*

AN ORDINANCE OF THE CAMAS COUNTY BOARD OF COMMISSIONERS, CAMAS COUNTY, IDAHO REPEALING ANY AND ALL EXISTING ZONING DESIGNATION MAPS, AND ADOPTING THE 2008 ZONING DESIGNATION MAP; AFFIRMING THAT PRESCRIBED NOTICE AND HEARING REQUIREMENTS WERE MET IN ACCORDANCE WITH TITLE 67, CHAPTER 65, IDAHO CODE; AND PROVIDING AN EFFECTIVE DATE.

### Ordinance No. 158

WHEREAS, following a public hearing held by the Camas County Planning and Zoning Commission, the County Commissioners received a recommendation from the Planning and Zoning Commission on April 22, 2008, to adopt a new Zoning Designation Map, and

WHEREAS, the Planning and Zoning Commission and the Board of Commissioners gave particular consideration to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the County, and

WHEREAS, the Zoning Designation Map is in conformance with the Comprehensive Plan, and

WHEREAS, after sending mailings, holding public meetings and public hearings, and providing legal notice, all according to law, the County Commissioners of Camas County, Idaho, voted to approve the 2008 Zoning Designation Map; and

WHEREAS, the Camas County Commissioners hereby find that the proposed 2008 Zoning Designation Map complies with all the provisions of the Idaho Code;

**NOW THEREFORE, BE IT ORDAINED BY THE CAMAS COUNTY COMMISSIONERS OF CAMAS COUNTY, IDAHO.**

Section 1: The Camas County Commissioners hereby repeal any and all existing Zoning Designation Maps, and adopt the 2008 Zoning Designation Map attached hereto as considered, heard and adopted by the Commissioners at its May 12, 2008, meeting.

Section 2: This Ordinance shall be in full force and effect immediately upon its adoption, approval, and publication as provided by law.

*Plaintiff's Statement of Material Fact*

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**Section 3:** The Zoning Designation Map is available for public inspection during normal office hours at the office of the Camas County Planning and Zoning Administrator.

ADOPTED by the Camas County Commissioners of Camas County, Idaho, this 12th day of May, 2008.

*By Ken Backstrom, County Commissioner (Recused)*

*By Ron Chapman, County Commissioner*

*By Bill Davis, County Commissioner (Recused)*

ATTEST: *Rollie Bennett, County Clerk*

## COUNTY OF CAMAS

### Ordinance No. 159

AN ORDINANCE OF CAMAS COUNTY, IDAHO REPEALING THE MARCH 10, 2008, EMERGENCY MORATORIUM; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS,** the Camas County Board of County Commissioners adopted an emergency moratorium on the 10th day of March, 2008, to comply with an Order from the District Court of Camas County; and

**WHEREAS,** the County was enjoined from accepting and processing land use and building permits under the ordinances and resolutions adopted in 2007; and

**WHEREAS,** the County has adopted new land use ordinances and resolutions that are not enjoined.

**THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CAMAS COUNTY, IDAHO:**

**Section 1:** The Emergency Moratorium adopted on March 10, 2008 is hereby rescinded and repealed.

**Section 2:** This Ordinance shall be in full force and effect upon following passage, approval and publication as provided by law.

Regularly passed and adopted by the Board of Camas County Commissioners on this 12th day of May, 2008.

*Ken Backstrom, County Commissioner*

*Ron Chapman, County Commissioner*

*Bill Davis, County Commissioner*

ATTEST: *Rollie Bennett, Camas County Clerk*

## NOTICE OF ELECTION

The Primary Election will be Tuesday, May 27th, 2008  
The polls will be open from 8:00 a.m. to 8:00 p.m.

The Polling places are as follows:

Precinct #1 - Legion Hall

Precinct #2 - Sheriff's Office

Any person who is physically unable to vote at his/her designated polling place may contact the County Clerk for an absent electors ballot

## NOTICE OF SCHOOL TRUSTEE ELECTION

### Camas County School District No. 121

#### Camas County, Idaho

Public Notice is hereby given according to law, and the requisite action of the Board of Trustees of Camas County School District No. 121, Camas County Idaho, that the annual school trustee election will be held on Tuesday, May 20, 2008.

Only those qualified electors residing in Trustee Zone No. 4 - Fairfield and Zone No. 5 - Blaine, may vote for a Zone No. 4 or 5 candidate. The purpose of said election shall be to elect one trustee to serve for a period of three years from the date of the election who resides within trustee Zone No. 4 and one trustee to serve for a period of three years from the date of the election who reside within trustee Zone No. 5.

Trustee Zone No. 4 and No. 5 are more specifically described as follows:

**Trustee Zone No. 4 - Fairfield**

**Trustee Zone No. 5 - Blaine**

As provided by Idaho Code, Section 33-502A no write-in vote shall be counted unless a declaration of intent has been filed with the District Clerk indicating that the person desires the office and is legally qualified to assume the duties of school trustee if elected. The declaration of intent shall be filed not later than fourteen (14) days before the day of election.

The polls will be open from 12:00 p.m. until 8:00 p.m. at the following locations:

**Gym Entrance at Camas County High School**

An elector must be a registered voter who has resided in this state and in this school district at least thirty (30) days preceding the election.

Qualified electors who expect to be absent from the District on May 20, 2008, or who will be unable, because of physical disability or blindness, to go to a polling place, may vote by absentee ballot. Written application for an absentee ballot may be made to the Clerk of the Board of Trustees on a form made available at the District Office at 610 Soldier Road on Monday through Friday from 8:00 a.m. to 4:00 p.m. Such application must be made no later than 11:00 (one hour before polls open), May 20, 2008. Electors applying in person may obtain their ballots starting April 21, 2008. Electors applying by mail should submit their requests as soon as possible. The absentee ballot must be received by the Clerk no later than 8:00 p.m. on the day of the election.

*By Order of the Board of Trustees.*



The intent of this zoning map is to indicate zone boundaries at natural break points, i.e. sections & parts of sections, property boundaries, roads, streams, etc.  
This map is a representation. For exact legal descriptions check zoning book.

ZONING MAP LEGEND

- Commercial
- Industrial
- High Density Res. - Four/Acre R-4
- Low Density Res. - One/Acre R-1
- Rural Res. - One/2.5 Acres A-2.5
- Agricultural - One/80 Acres A-80
- Ag Transition - AT-1
- Ag 5 - One/5 Acres A-5
- Ag 10 - One/10 Acres A-10
- Ag 20 - One/20 Acres A-20
- Ag 40 - One/40 Acres

BEFORE THE CAMAS COUNTY BOARD OF COMMISSIONERS

IN THE MATTER OF THE 2008	)	
ZONING MAP FOR CAMAS COUNTY	)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	

The Board of County Commissioners ("Board"), having determined that it is in the best interest of the County to adopt a new zoning map for Camas County, and having heard and taken oral and written testimony and having duly considered the matter, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The District Court of Camas County in Case No. CV-07-24 issued a preliminary injunction on March 7, 2008, enjoining the County from processing any land use applications pursuant to Ordinances 12, 150 and 153. The Plaintiff in Case No. CV-07-24 made a number of allegations, including a challenge to the procedure and substance of Ordinances 150 and 153.
2. Ordinance 12 is the original zoning ordinance for Camas County. Ordinances 150 and 153 adopted a new zoning ordinance and zoning map for Camas County in 2007.
3. In adopting the 2007 Zoning Map, the Board made the determination that based on Idaho Supreme Court case law, a county-wide zoning map is legislative in nature, and the Board adopted the 2007 Zoning Map using legislative proceedings.
4. In adopting the 2007 Zoning Map, the Board made the determination that individual members of the Planning and Zoning Commission ("Commission") and individual

Plaintiffs' Statement of Material Fact

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members of the Board did not have a conflict of interest by the mere ownership of land in the County.

5. In the preliminary injunction order for Case No. CV-07-24, the District Court made a determination that a county-wide zoning map was a quasi-judicial proceeding and all Commission and Board members that owned property in the County that would potentially be rezoned in the adoption of a county-wide zoning map had a conflict of interest.

6. The Board adopted a moratorium on all building permits and land use permits on March 10, 2008 to comply with the Court's Order of March 7, 2008.

7. The Board submitted an interlocutory appeal to the Idaho Supreme Court appealing the Judge's determinations and preliminary injunction. The Idaho Supreme Court declined to hear the interlocutory appeal.

8. The Board believes that the adoption of a county-wide zoning map is a legislative proceeding and not subject to the judicial review requirements of LLUPA, including Idaho Code 67-6536. The Board also believes that Ordinances 150 and 153 will be upheld by the Idaho Supreme Court.

9. However, the Board decided that in the interest of rescinding the moratorium and complying with the District Court's determination that the adoption of a county-wide zoning map is a quasi-judicial procedure and subject to the judicial review requirements of LLUPA, the Board would consider re-adopting the 2007 Zoning Map and the consideration of a new zoning map would be as a quasi-judicial proceeding.

10. In March, 2008, the Board sent a request to the Planning and Zoning Commission to consider adopting a new zoning map, pursuant to Idaho Code 67-6511. On March 25, 2008,

FINDINGS OF FACT AND CONCLUSIONS OF LAW - Page 2

Plaintiff's Statement of Material Fact

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the Planning and Zoning Commission made a motion to draft a new zoning map to submit to the Board for consideration.

11. All members of the Planning and Zoning Commission that owned land in the County that may potentially be rezoned by the adoption of a new zoning map recused themselves on the record and refrained from participating in any of the proceedings to adopt a new zoning map.

12. The Commission held several meetings to discuss the new ordinances, including the draft zoning map.

13. Notice of a Public Hearing before the Camas County Planning and Zoning Commission on the draft 2008 Zoning Map was published in accordance with the requirements of Title 67, Chapter 65, Idaho Code. Requests for agencies' reviews were transmitted in accordance with the requirements of Idaho Code. Notice was posted in several places around the County in accordance with the requirements of Idaho Code.

14. The Commission held a public hearing on the draft zoning map on April 21, 2008. The Commission took public testimony and reviewed the written testimony. The public hearing was closed on April 21, 2008, at the conclusion of the public hearing. The Commission then took up the matter and rendered its recommendation to forward the draft zoning map to the Board for consideration.

15. The Board received the Commission's recommendation in a Board meeting on April 22, 2008. The members of the Board that owned property in the County that potentially may be rezoned recused themselves on the record and refrained from participating in any of the proceedings to adopt a new zoning map.

FINDINGS OF FACT AND CONCLUSIONS OF LAW - Page 3

Plaintiffs' Statement of Material Fact

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16. The Board made a motion to set a public hearing on the draft zoning map. The public hearing was set for May 12, 2008.

17. Notice of the Board's Public Hearing on the application was published in accordance with the requirements of Title 67, Chapter 65, Idaho Code. Requests for agencies' reviews were transmitted in accordance with the requirements of Idaho Code. Notice was posted in several places around the County in accordance with the requirements of Idaho Code.

18. Written comments were received from public agencies. These comments were reviewed and the Board and Commission determined which comments to incorporate.

19. The Board took additional public testimony and reviewed the written testimony on May 12, 2008. The public hearing was closed on May 12, 2008, at the conclusion of the public hearing. The Board then took up the matter and rendered its decision.

20. At the public hearings there was mixed testimony from the public. A petition was submitted to the Commission with over 100 names supporting the County's adoption of a new zoning map. A majority of the testimony to the Commission and Board against the zoning map concerned the litigation against the County or complaints against the County for adopting a new zoning map. Little substantive and relevant testimony as to the actual placement of zones was received.

21. The property which is the subject of the draft 2008 Zoning Map is the entirety of Camas County. Camas County consists of largely agricultural land. A majority of the private land in Camas County is used for farming and ranching.

22. The Land Use Section of the Comprehensive Plan states that the northern part of the county would be a poor area for development. With the exception of some residential density

to reflect current subdivisions located on the South Fork of the Boise River (over Fleck Summit), the northern portion of the County is zoned agricultural.

23. The Land use Section of the Comprehensive Plan states that commercial and residential use has traditionally been located in Fairfield, Soldier, West Magic, Corral, Hill City, Manard and Blaine.

24. The Land Use Section states that the areas in Camas County most suited for higher density are the platted townsites and adjacent to West Magic (a community center).

25. Fairfield is the only incorporated town. Soldier, Corral, Hill City, Manard and Blaine are platted townsites. West Magic is not a platted townsite but several platted subdivisions are located there.

26. Residential and commercial uses were zoned in the platted townsites and West Magic to comply with existing conditions and center any future commercial and residential development in established areas.

27. Commercial and residential development was zoned in the Soldier Creek vicinity to reflect current development and channel development to established areas.

28. Residential development was zoned in the Willow Creek vicinity to reflect current development and channel development to established areas.

29. Commercial and residential development was zoned in the Solider Mountain Ranch area to reflect current development and channel development to established areas.

30. Additional higher density residential zones were established near Soldier Mountain Ranch area, where existing subdivisions such as Mountain Sun and Smoky Dome Ranchos already exist.

31. Some low density residential is zoned in the Squaw Flats area to reflect current development and allow for limited residential development in that area.

32. A majority of the County was zoned agriculture to comply with the Land Use Section of the Comprehensive Plan that states the preservation of agricultural uses is of utmost importance.

33. Commercial and residential zones were placed in areas of existing development to channel development away from the large agricultural areas and allow pre-existing community centers some additional growth to support schools and economic development in the County.

34. The 2008 zoning map is in accordance with the text of the County's Comprehensive Plan.

35. The draft 2008 zoning map is also in accordance with the Comprehensive Plan land use map as adopted by Resolution 103, on March 29, 2007. The Comprehensive Plan land use map was not enjoined by the Court in its March 7, 2008 injunction.

36. The Board considered the effect the zoning would have on affected political subdivisions that provide services to the County. The Board determined that the County should be zoned to provide for some growth in residential and commercial development to provide students and a tax base to support the schools. However, the growth must be controlled to avoid overwhelming the schools with too many new students at once. The Board determined that the draft 2008 Zoning Map accomplishes these goals. The Board determined that the irrigation districts would not be adversely affected. The Board determined that the fire districts would not be adversely affected.

208 154 2454 P. 8

Conclusions of Law

1. All requirements for providing notice of the public hearings thereon, including notice by publication and notice to other agents as set forth in Title 67, Chapter 65, Idaho Code have been complied with.
2. All requirements for the conduct of public hearings are set forth in Title 67, Chapter 65, Idaho Code have been complied with.
3. The 2008 Zoning Map does not have demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services, including school districts, within the County.
4. Camas County has the authority to adopt new zoning district boundaries pursuant to Idaho Code Section 67-6511 and LLUPA.
5. The 2008 Zoning Map is in accordance with the Camas County Comprehensive Plan.

Decision

The Camas County Board of County Commissioners approves the adoption of the 2008 Zoning Map.

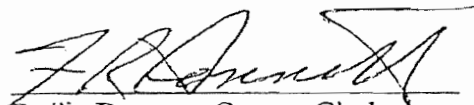
DATED this 19<sup>th</sup> day of May, 2008

By RECUSED  
Ken Backstrom, County Commissioner

By Ron Chapman  
Ron Chapman, County Commissioner

By RECUSED  
Bill Davis, County Commissioner

ATTEST:

  
Rollie Bennett, County Clerk

**AGENDA**  
**CAMAS COUNTY BOARD OF COUNTY COMMISSIONER'S MEETING**  
**AT THE COURTHOUSE ANNEX COMMISSIONER'S ROOM**  
May 19, 2008

9:00 AM - Closing (as time permits)

- \*Correspondence & committee reports
- \*Executive session as needed
- \*Dwight Butlin Re: Planning & Zoning issues
- \*Discuss setting Planning & Zoning Commission Member interviews
- \*Adopt, if appropriate, Findings of Fact and Conclusions of Law regarding the new Zoning Designation Map
- \*Sign assignment to the Catastrophic Health Care Cost Program for Indigent Case # 64
- \*Vote for the appointment of Everett "Buck" Ward to the Board of Health for South Central Public Health District
- \*Lynn McGuire Re: Circuit Breaker applications

9:00 AM

- \*Call to order

9:30 AM

- \*Tera King of Northwest Management with proposed Resolution # 116, to adopt the All Hazard Mitigation Plan

10:00 AM

- \*Terry Lee Re: Letter of endorsement for LIA

\*If all agenda items are not covered on May 19, 2008 the meeting will be adjourned to another date for completion of the agenda.

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CAMAS COUNTY COMMISSIONERS

5-19-08

The meeting was called to order at 9:05 am.

Present were Chairman, Ken Backstrom, Ron Chapman, Bill Davis and Clerk, Rollie Bennett.

The Board reviewed the agenda. Bill moved to accept the agenda as posted. 2<sup>nd</sup> by Ron. Unanimous.

The Board reviewed recent correspondence.

Ron reviewed the staff prepared Findings of Facts and Conclusions of Law regarding the new Zoning Designation Map adopted at the May 12, 2008 public hearing. Ken Backstrom and Bill Davis recused themselves from the proceeding. Ron Chapman adopted the Findings of Fact and Conclusions of Law.

Tera King from Northwest Management met with the Board and presented the final All Hazard Mitigation Plan.

Bill moved to adopt Resolution #116, adopting the Camas County Multi-Hazard Mitigation Plan. 2<sup>nd</sup> by Ron. Unanimous.

Recessed at 10:00 am.

Reconvened at 10:12 am.

Terry Lee met with the Board and requested approval and letter of support from the Board to attend a Leadership Idaho Agriculture program, starting in November.

The Board will revisit the matter at their June 9<sup>th</sup>, 2008 meeting.

Ken read the letter of appreciation from the Caboose Tourist Information Center.

The Board considered Buck Ward for reappointment to the South Central District Health Board and cast their votes accordingly.

Lynn McGuire met with the Board and presented the Circuit Breaker applications.

Dwight Butlin and Megan Supernaugh met with the Board. Dwight stated that there were three applications for the vacant Planning and Zoning Commission position. The Board will set the interviews for June 10<sup>th</sup> at 7:00 pm, 7:30 pm and 8:00 pm. The Board will meet at 6:30 pm to review the applications.

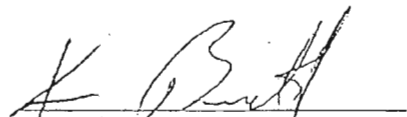
Dwight also discussed maintenance on the building that is necessary.

The Board reviewed an assignment from ICRIMP for reimbursement on Indigent Case #64. Ron moved to approve and sign the assignment. 2<sup>nd</sup> by Bill. Unanimous.

Bill moved to adjourn at 11:25 am. 2<sup>nd</sup> by Ron. Unanimous.

ATTEST

  
Clerk, Rollie Bennett

  
Chairman, Ken Backstrom

Plaintiff's Statement of Material Fact.

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reviewed and approved @ 7/01/08 P+Z meeting



P&Z Additional Meeting  
April 21<sup>st</sup>, 2008

Members Present: Marshal Ralph, Ed Smith, Celia Brown, Bill Simon, Robbie Miller,  
Kevin Wear

Staff Present: Dwight Butlin, Megan Supernaugh, Paul Fitzer, Attorney

5:04pm- Marshal calls the meeting to order.

Review minutes of 4/7/08 meeting.

Celia makes a motion to approve. Bill 2<sup>nd</sup>. Carries unanimously.

Marshall reads the rules and procedures for a public hearing. Marshall reads a short speech on why we are having this public hearing.

Marshall opens the public hearing for the comprehensive plan and asks for public testimony FOR the Comp Plan.

Staff reports on the packages sent out to the political subdivisions and the written comments received from the political subdivisions and the public.

- 1.) A petition is presented by Shannon Wolf to the P & Z commission in support of what they have been doing over the past several years. The petition was signed by around 100 residents of Camas County. Shannon thanks the commissioners for their hard work and perseverance under all of the conditions that have proceeded these hearings. He then reads the names for the record.

- 2.) Rod Gonsales concurs with Shannon Wolf.

Marshall next asks for those NEUTRAL to speak. ( No one speaks.)

Marshall next asks for those OPPOSED.

- 1.) Mr. George Martin, 970 E. 240 N., talks about the county breaking the law and then reads from the Camas Courier about the injunctions that the county is under and how they are violating the judge's orders by passing new ordinances and may be in contempt of court.
- 2.) Mr. Dave Konrad, 975 E. 240 N., speaks against the amount of time the county has spent compiling the information and the amount of time the county has scheduled for the public hearings. Four in one night is too many and they have not spent enough time compiling information. He also speaks against the overlay districts, airport, stream side and tourism.
- 3.) Mrs. Leslie Martin, 970 E 240 N., states the county is not following the law.
- 4.) Mr. Dan Kenney of Willow Creek states there are flaws in the Comp Plan. There are problems with the introduction, that sewage is mentioned and sprawl. The numbers are out of date and not a lot of thought was put into the plan and also it is hard to see the changes in the public copies.
- 5.) Mrs. Nancy Davies, 950 N 000 W., agrees with Dave Konrad and she is discouraged about the streamside taken out of the plan. She is worried about Soldier Creek and would like to see that stay in the Comp Plan.
- 6.) Mr. Dennis Foisy, P.O. Box 506, is not opposed to plan, but the procedures that were followed. Opposed to not involving the public with workshops.

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- 7.) Mr. Bob Rodman, Rt. 1 Box 1118, doesn't like removing the streamside overlay and protective areas. The numbers are out of date and it shows the county growing slowly and this is not the case. He wants to know why the All Hazards Mitigation Plan was not used? He also states that the county is exposing themselves to more lawsuits.

Public hearing closes at 5:37 pm.

Public Hearing opens for the Land Use Map

Staff make comments about the map not being set in stone and could be changed.

Marshall asks for comments FOR the map.

- 1.) Mr. Marvin France commends the commissioners for doing a great job. A petition is read into the record in support of the commission with about 100 signatures on it.
- 2.) Shannon Wolf had filled out a comments sheet to speak but said he had no comment.

Marshall asks for NEUTRALS to comment. ( No one speaks)

Marshall asks for those AGAINST to speak.

- 1.) Mr. George Martin wishes all those who had signed the petitions would be at the hearings to see for themselves how the commissioners work. He said the petitioners need informational meetings and that they really don't know what is going on. That the commission had not gone through the proper procedures.
- 2.) Mrs. Nancy Davies states she still opposes it as before in 2007. She is concerned about the land on the road between Wells Summit turnoff and Couch Summit turnoff getting too dense. She opposes commercial and R-1 near Soldier Mountain Ski Resort and to please rethink about the environmentally sensitive areas.
- 3.) Mr. Dan Kenney states it doesn't appear that there is any actual planning and thinks growth should be in Hill City and Corral. Some ag should be residential and growth should be near the town of Fairfield. He doesn't want up-zoning because his property will go down in value.
- 4.) Bill Cimino agrees with all of those opposed.

Public hearing closes at 5:51 pm

Marshall opens the hearing for the Zoning Ordinance.

Staff talks about the new 40 acre parcels, additional dwelling units, lots of record, definition of manufactured homes, clustering definition, Ag-Tran, streamside setbacks and overlay and how they had to be zoned.

Marshall asks for comments from those FOR the draft ordinance.

- 1.) Mr. W. A. Simon, 465 E 200 N., presents a petition of supporters containing around 100 signatures and reads the names into the record. Mr. Simon said that he has never found fault with our elected officials in the past. That the subdivision applications carry a lot of the weight, not just the zoning ordinance.

Marshall asks for comments from NEUTRALS. (No one comments.)

Marshall asks for comments from OPPOSED.

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1.) Mr. George Martin Jr. states that he wants to trust officials, but he can't. Ed Smith has a direct conflict of interest because of his dealings with Mr. Bruce McCaw. He then reads from the lawsuit he has filed against the county. Marshal then reminds the audience to stop the personal attacks on people, that this is a public hearing not a forum for personal attacks.

2.) Mr. Dennis Foisy states that he is against the new ordinance, that we still have ordinance #153 in place. That both the P & Z Commission and the Board of County Commissioners are receiving bad legal advice. He then gives a metaphor about making scrambled eggs and trying to unscramble them and all you will end up with are hockey pucks.

3.) Janet Croner states that the City did not receive a packet from the County and that she had attended a meeting with Jerry Mason ( Association of Idaho Cities) as speaker. That there is nothing in the zoning ordinance in reference to the Area of City Impact and she questions the P & Z Administrator about that. How could it be in the Comp Plan and not in the Zoning Ordinance? The Administrator informs her that the Area of City Impact is done through negotiations with the Board of County Commissioners and the City and that the County has jurisdiction in the Area of City Impact.

4.) Mr. Dan Kenney states that he is glad there is no more Ag Tran and the Ag 5, Ag 10 and Ag 20 should be residential, not Ag. This designation is not practical for subdivisions.

5.) Mrs. Leslie Martin concurs with everyone that is against the new ordinance.

6.) Mr. Bob Rodman repeats the things he stated earlier when they came through in 2007. There is no new information other than lines to see where property is zoned. He thinks it is going to be interesting to see who has to recuse themselves.

7.) Mr. David Konrad states that what Mr. Rodman is saying is just common sense and that there have been oversights from the city and county.

Marshall closes the hearing at 6:20 pm.

All members of the commission recuse themselves except Celia Brown because the Brown's property is not affected by the zoning on the map.

Celia then takes the chairmanship and proceeds with the hearing of the ZONING MAP. Staff (Mr. Butlin) then explains the changes to the Zoning Map indicating that some of the zone changes are to existing subdivisions in order keep lot sizes in conformance and not create non conforming lots in existing subdivisions.

Celia then asks for comments FOR the new map.

1.) Mrs. Char Englestad states she has been a resident of the county for 18 years and thanks the commission for all the work they have done and notes that this is a volunteer position. She states that she is glad to see the Ag Tran go away and that other cities are divided out as well.

2.) Mr. Shannon Wolf thanks the P & Z Commission and states that he is sorry the commission has been drug through the process that is happening.

3.) Mr. W. A. Simon states that if we had full time hired people we could probably do more and that he appreciates the board members. He then reads a

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petition and the names of 113 supporters into the record and thanks the commission for their time.

Celia then asks for comments from NEUTRALS. (No one comments.)

Celia then asks for comments from those AGAINST.

- 1.) Mr. Dan Kenney states that R-4 is too much for Hill City and Corral. There are already a lot of unsold lots in the county. He is against the map because it will make his property go down in value and that he has never heard a good explanation yet why the rezoning is necessary.
- 2.) Mr. George Martin, Jr. states the law has not been followed, Idaho Power does not have enough power to service the county for all of these "up zones". He notes that a complete package had been sent out on March 14, 2008. That the county commissioners had moved their meeting to hurry things up. He states that the P & Z Commissioners are guilty of contempt and time will tell.
- 3.) Mrs. Leslie Martin concurs with George.
- 4.) Mr. David Konrad states that Celia is in a tough spot and to think of the tax payers. To take the land use map and rezone it is incorrect. Where are we going in the future? He has the same concerns that he did 2 years ago. The shortage of power, who's going to pay for improvements, that the county should read from Idaho Code 67-6508 and then he reads from Mr. Martin's lawsuit against the county.
- 5.) Mr. Dennis Foisy states that its convenient for the Board to delay their meeting and that he doesn't trust the commission, that they should read Idaho Code 67-6511 and that the county is like a cancer in remission. They still have cancer. The board is guessing and there is no case law to verify what they are doing.
- 6.) Mr. Bob Rodman can't see why we need a rezone. He says to read Judge Elgee's decisions for facts.
- 7.) Mrs. Nancy Davies opposes the map as is, and is concerned about the zoning north of Wells summit road being commercial. She states we need professional help.
- 8.) Mr. Jim Chambers of Boise, who represents a land owner in the county, asks why we would rezone that much property? He hired an engineer to look at his property and cautioned the members 2 years ago about rezoning. Why rush through a rezone? Planning is good.
- 9.) Mr. Bill Cimino agrees with David Konrad and Jim Chambers.

Celia closes the public hearing at 6:56 pm.

Marshall resumes the chairmanship and suggests a recess.

The commission recesses at 6:59 pm.

The commission reconvenes at 7:14 pm.

Marshall opens deliberation on the Comprehensive Plan.

Bill Simon requests the attorney to explain why they feel the urgent need to move the Zoning Ordinance and map and Comp. Plan and map to the Board of County Commissioners.

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Paul Fitzer explains the reason for the hearings and the urgency to move forward. Ed Smith reminds everyone that this is not new. They have worked on these for 2 ½ years. Judge Elgee thinks that there are procedural errors in the previous hearings and we are trying to correct those. Kevin Wear thinks that we have fixed what needs to be fixed the last 4 weeks. Marshall feels then and now that people agree. The drafts represent a thoughtful process and the commissioners are acting in the best interest of the county. Celia agrees with Marshall. Robbie agrees also and states that the commission will continue to review the documents and maps. He states that every time we think it is done we find something new. It is a living document and is subject to change. Bill Simon states for the record that the "duress" comment that was in the Camas Courier was incorrect and that no one on the commission is under any "duress". Ed Smith reminds everyone what brought this on in the first place. That the Comp Plan showed 100,000 plus acres north of Baseline road had the potential of being zoned 1 dwelling per acre. That Ag Tran allowed 1 dwelling per acre and things were spinning out of control and the Comp Plan, Zoning Ordinance and associated maps needed to be fixed. Celia moves to send the Comp Plan on to the Board of County Commissioners with a recommendation of approval. Kevin Wear seconds the motion. The motion is carried unanimously. The deliberation is closed at 7:25 pm. Marshall opens deliberation on the Land Use Map at 7:26 pm. Ed states that he should have made his comments on the Ag Tran now, but the information he had presented was still pertinent to the hearings. Bill states that all of the support the commission received from the petitions that were presented at the hearing gives him some comfort and thinks they should move ahead. Kevin states that the commission has worked four hard weeks on these documents and he thinks they look good. Marshall states that in the beginning, 2 ½ years ago, he had different ideas but it still looks good to him. Bill states that when the supply goes up that prices go down and that they are missing something. Demand has to be there or property will not increase in value. Marshall states that zoning does not create demand was a comment Mr. Martin made in 2005. Ed restates his earlier comments about the 100,000 acres plus that had been designated Ag Tran north of Baseline road. Kevin makes a motion to pass the map on to the Board of County Commissioners with a recommendation of approval. Bill seconds the motion. A vote is taken and the motion carries unanimously. The deliberation is closed at 7:32 pm. Marshall opens deliberations on the Zoning Ordinance at 7:33 pm.

Kevin states that some testimony about the Area of City Impact had been received and questions raised about it being in the Comp Plan but not in the Zoning Ordinance. He then asks Mr. Fitzer to clarify that situation.

Mr. Fitzer states that the Area of City Impact agreement between the City and the County would govern the Area of City Impact. County ordinances govern land use in the Area of City Impact if there is no agreement in place between the City and the County. The County has jurisdiction in the Area of City Impact.

Kevin thinks the ordinance looks good.

Marshall states that he is glad to see the Additional Dwelling Unit in the new ordinance. They had worked on it before but somehow it had fallen through the cracks and did not get in the last one.

Kevin states he is glad they had the chance to come back and fix the ordinance.

Robbie states that impact fees always come up in discussions but it is necessary to do an impact fee study and it involves a long process including engineering studies. Big cities have people just for that job and we are still striving to get to that point.

Bill moves to send the Zoning Ordinance on to the Board of County Commissioners with the recommendation of approval.

Celia seconds the motion and the motion carries unanimously.

Marshall closes the deliberation at 7:41 pm.

All of the members recuse themselves from deliberation on the Zoning Map except Celia Brown.

Celia opens the deliberations at 7:42 pm.

Mr. Fitzer explains, for the record, that the other members may or may not be affected and that is why they recused themselves.

Dwight explains why staff made the changes in the Zoning Map. He states that the Assessor's office has been a great deal of help in the process, especially in acquiring legal descriptions. That staff and the Assessor's office has spent many man hours accumulating information and making sure it is correct.

Celia recommends that the map be sent on to the Board of County Commissioners with a recommendation of approval.

Deliberation is closed at 7:45 pm

Marshall and the commissioners return to their seats and Marshall reopens the meeting.

Bill moves to adjourn the meeting seconded by Celia and the motion carries unanimously.

The meeting is adjourned at 7:46 pm.

An attachment to the hand written minutes shows the readings on the 2 tapes in relation to the start and stop times of the hearing and deliberations.



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 ISB# 7473

Attorney for Plaintiff

FILED  
 5-20-08  
 IR \_\_\_\_\_ M.  
 ROLLIE BENNETT  
 CLERK OF THE DISTRICT COURT  
*B. D. Kalla*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
 OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN,

Plaintiff,

and

MARTIN CUSTOM  
 HOMES, L.L.C.,

Plaintiff,

v.

ED SMITH,

Defendant,

and

CAMAS COUNTY, IDAHO,  
 By and through the duly elected  
 Board of Commissioners in  
 their official capacity,

KEN BAXTROM,  
 BILL DAVIS, and  
 RON CHAPMAN,

Defendants.

Case No. CV-07-24

PLAINTIFF'S APPLICATION FOR  
 TEMPORARY RESTRAINING ORDER,  
 PRELIMINARY INJUNCTION AND  
 DECLARATORY RELIEF

PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER,  
 PRELIMINARY INJUNCTION AND DECLARATORY RELIEF - MAY 12, 2008  
 COMPREHENSIVE PLAN, LAND USE MAP, ZONING ORDINANCE AND  
 ZONING DESIGNATION MAP

Plaintiff's Statement of Material Fact

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1. On or about May 12, 2008, by Ordinance Nos. 157 and 159 the Camas County Board of Commissioners adopted a new amended Zoning Ordinance and Zoning Designation Map.
2. In the instant case the Defendant's were repeatedly advised to follow the process as provided under LLUPA, in both the amendment process beginning in 2005, which has now been the subject of more than one (1) year of litigation, and again during the process beginning in March of 2008. Defendants were repeatedly invited to begin the initial amendment process anew, following the lawfully provided procedural and substantive process, but declined to do so. Now on the eve of trial and probable adverse judgment. Defendants, in violation of the Court's Order and LLUPA, have adopted alterative ordinances. Unfortunately, the latest process is as procedurally and substantively flawed as the initial process, and is void ab initio. The "adoption of new land use ordinances prior to trial" was intended from its inception only to avoid the jurisdiction of the court.
3. Idaho Rule of Civil procedure Rule 65(e). Grounds for preliminary injunction, provides in pertinent part,

A preliminary injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.

(3) When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some

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ZONING DESIGNATION MAP

Plaintiffs' Statement of Material Fact.

act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

5. Idaho Code Section 67-6527 dealing with violations of LLUPA also provides for immediate injunctive relief. The statute reads in pertinent part,

Upon a showing that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or ordinance or regulation enacted hereunder, a permanent or temporary injunction, restraining order, or such other relief as the court deems appropriate shall be granted. The governing board shall not be required to furnish bond.

6. In the instant case Plaintiff has previously shown he would be irreparably harmed if Defendant Camas County is permitted to proceed with the processing of land use application under illegally adopted amended zoning ordinances that have adversely affected real property in which he holds and interest, as to lands that have been affected by said amended zoning. Plaintiff relies heavily upon paragraph numbered (3) of Rule 65(e).

7. Attached hereto and made a part hereof are the following Exhibits;

- Exhibit A – Published Notice of Planning and Zoning Commission Hearing on Zoning Ordinance and Comprehensive Plan, Camas Courier April 2, 2008, for hearing on April 21, 2008.
- Exhibit B – Published Notice of Board of County Commissioners Hearing on Zoning Ordinance and Comprehensive Plan, Camas Courier April 23, 2008, for hearing on May 12, 2008.
- Exhibit C Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Zoning Map.



- Exhibit D Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Zoning Ordinance
- Exhibit E Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Comprehensive Plan Map.
- Exhibit F Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Comprehensive Plan.
- Exhibit G – Publication of adoption on May 12, 2008 of Zoning Ordinance No. 157, and Zoning Map Ordinance No. 158 Board of County Commissioners Hearing published in the Camas Courier on May 14, 2008.

DEFENDANT'S ACTIONS IN ADOPTING NEW AMENDED ORDINANCES IS IN  
VIOLATION OF THE COURT'S PRELIMINARY INJUNCTIONS

8. This Court, in its order of December 28, 2007, without striking the ordinance as wholly void, enjoined and prohibited Defendant from proceeding under the Zoning Ordinance amended in March of 2007 and the related Zoning Map if the Zoning Map purportedly affected any sort of change in existing zoning. Again, in this Court's Order of March 10, 2008 the Court stated, on page three (3) "until such time as a final Order is entered the County cannot treat the March 2007 Zoning Amendments as void..."

9. The Court stated, "In the Court's view the applicable zoning in Camas County governing land use applications cannot change week to week, as the case at hand progresses.

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At such time as a *final* order is entered the question of which County Zoning Ordinance applies will have been settled, and not before."

10. The only means to amend the Zoning Ordinance is the procedure provided for in the Zoning Ordinance, Article XVII, and in full compliance with LLUPA. The Defendant's actions in amending the Zoning Ordinance, again altering the Zoning Designation in areas purportedly affected by zoning change by the 2007 amendments, are in violation of the Court's Order.

PROCESS OF ADOPTING NEW AMENDED COMPREHENSIVE PLAN & ZONING  
ORDINANCE IN VIOLATION OF LLUPA

6. The new amended Comprehensive Plan and Zoning Ordinance Land Use Map and Zoning Map are substantially identical to that approved in May 2006. March and April 2007, with several minor exceptions.

7. The draft date of the new amended Camas County Comprehensive Plan and Zoning Ordinance is March 10, 2008 before any meeting had been held, indicated unnoticed and illegal meetings of the Board of Commissioners.

8. The draft date of the new amended Camas County Comprehensive Plan and Zoning Ordinance Land Use Map and Zoning Map is March 14 2008 before any meeting had been held, indicated unnoticed and illegal meetings of the Board of Commissioners.

9. Among the procedural errors associated with the new process are; a) Legal Notice of Public Hearing deficiencies in violation of I.C. Sections 67-6509 & 67-6511 because no summary of the proposed amendments, that would reasonably apprise an individual of the nature or location of the proposed land use zoning changes, was included in said Legal Notice; b) nor was said notice provided to all political subdivisions providing services

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within the planning jurisdiction, specifically City of Fairfield, and West Magic Fire District; c) deficiencies under I.C. Section 67-6511 and Camas County No. 142 in providing additional or alternative notice in the case of zoning district boundary change in that notice was not posted as required at the Camas County Courthouse or Fairfield City Hall; d) deficiencies in the recommendations made by the Planning and Zoning Commission to the Board of County Commissioner regarding the new amended Comprehensive Plan, Zoning Ordinance and related Land Use Map and Zoning Designation Map in violation of I.C. Sections 67-6507, 67-6509 (a) & (b), 67-6511 (b), and in the findings issued by the Board of Commissioners; e) publication deficiencies under I.C. Section 31-715A due to failure to publish the entire text, including legal description of the rezoned land, or alternatively a summary that actually describes the amendments made; and f) failure to remedy the stench of pre-existing conflicts of interest as found by this court.

10. Idaho Code Sections 67-6502 provides the twelve (12) purposes for the Local Land Use Planning Act, including; (a) To protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks, (b) To ensure that adequate public facilities and services are provided to the people at reasonable cost, (c) To ensure that the economy of the state and localities is protected, (d) To ensure that the important environmental features of the state and localities are protected, (e) To encourage the protection of prime agricultural, forestry, and mining lands for production of food, fibre, and minerals, (f) To encourage urban and urban-type development within incorporated cities, (g) To avoid undue concentration of population and overcrowding of land, (h) To ensure that the development on land is commensurate with the physical characteristics of the land, (i) To protect life and

property in areas subject to natural hazards and disasters, (j) To protect fish, wildlife, and recreation resources, (k) To avoid undue water and air pollution, (l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis.

11. The legislature to ensure the purposes of the Act are met provides for the mandatory duties, process, procedure and required criteria to be considered in I.C. Sections 67-6507, 67-6508, 67-6528, 67-6535 and 67-6537. For example, I.C. Section 67-6528 states in relevant part, "...In adoption and implementation of the plan and ordinances, the governing board or commission shall take into account the plans and needs of the state of Idaho and all agencies, boards, departments, institutions, and local special purpose districts..." No such accounting of said plans or needs was had in this case or appears in the record of same.

12. Likewise, I.C. Section 67-6511 (a) provides in relevant part, "...Requests for an amendment to the zoning ordinance shall be submitted to the zoning or planning and zoning commission which shall evaluate the request to determine the extent and nature of the amendment requested. Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction..." No such evaluation of the extent and nature of the amendment has here occurred, or appears in the record of same.

13. Similarly, I.C. Section 67-6511 (b) allows a Planning and Zoning commission to make a recommendation to amend a Zoning Ordinance only "After considering the

comprehensive plan and other evidence gathered through the public hearing process..."

No such consideration was made or appears anywhere in the record of this new process.

14. Idaho Code Section 67-6537 (4), states "When considering amending, repealing or adopting a comprehensive plan, the local governing board shall consider the effect the proposed amendment, repeal or adoption of the comprehensive plan would have on the source, quantity and quality of ground water in the area." Nothing in the record hereof indicates that any such consideration of ground water issues was had by the Camas County Board of Commissioners.

15. Finally, the legislature, to be certain the purposes of LLUPA were adhered to, adopted 67-6535, requiring approvals of land use ordinances affecting a change in zoning district boundary, like that which has occurred here, to base the decision upon standards in writing. In full the statute provides,

(a) The approval or denial of any application provided for in this chapter shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county.

(b) The approval or denial of any application provided for in this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

(c) It is the intent of the legislature that decisions made pursuant to this chapter should be founded upon sound reason and practical application of recognized principles of law. In reviewing such decisions, the courts of the state are directed to consider the proceedings as a whole and to evaluate the adequacy of procedures and resultant decisions in light of practical

considerations with an emphasis on fundamental fairness and the essentials of reasoned decision-making. Only those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision. Every final decision rendered concerning a site-specific land use request shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code.

None of this occurred in the initial or new amendment process. Therefore, the new amended Comprehensive Plan, Zoning Ordinance and related Land Use Map and Zoning Designation Maps are void on the face of the record before the Court. No analysis of whether or not the previously adopted flawed Plan, Zoning Ordinance or Maps, are void is necessary. The Court should proceed to restrain and enjoin the new amendments, and move through trial on the merits of all the amendments.

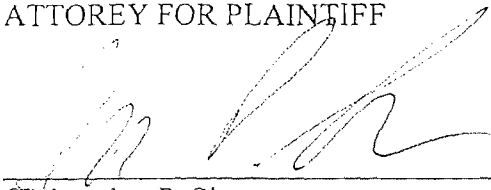
16. Plaintiff files this unverified Application, through Counsel, after brief, but good faith review of the facts and law applicable hereto, and stands ready to present testimony or duly executed affidavit at the first opportunity given a recess of trial.

WHEREFORE, Plaintiff prays this Court enter its Order temporarily restraining Defendant from processing any land use applications under the Zoning Ordinance and Comprehensive Plan illegally adopted on or about May 12, 2008, including but not necessarily limited to subdivision applications and rezone applications as to any lands purportedly affected by a change of land use designation thereby.

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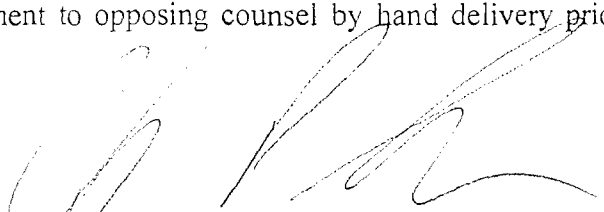
*Plaintiff's Statement of Material Fact.*

CHRISTOPHER P. SIMMS  
ATTORNEY FOR PLAINTIFF

  
\_\_\_\_\_  
Christopher P. Simms

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20TH day of MAY 2007, I served a true and correct copy of the foregoing document to opposing counsel by hand delivery prior to hearing.

  
\_\_\_\_\_  
Christopher Simms

PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER, 10  
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NO	DATE	BY	REVISIONS
			Engineers & Land Surveyors INC. OF MICHIGAN 1000 W. FARM ROAD ANN ARBOR MI 48106 (313) 769-1177



Agricultural - AG  
Agricultural Trans  
Residential - R-7

6115



20 ACRES

67 ACRES

## Soldier Townsite

NORTH 81 + ACNE PARCEL

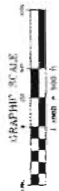
**SOUTH 80 ACRE PARCEL**

57 ACRES

Fairfield

plaintiff's Statement of Material Facts





## Pre 2006 Zoning Map

### LEGEND

Agricultural - AG - ALL PROPERTY UNLESS MARKED  
Agricultural Transition - AT <sup>✓</sup><sub>1-2</sub>  
Residential

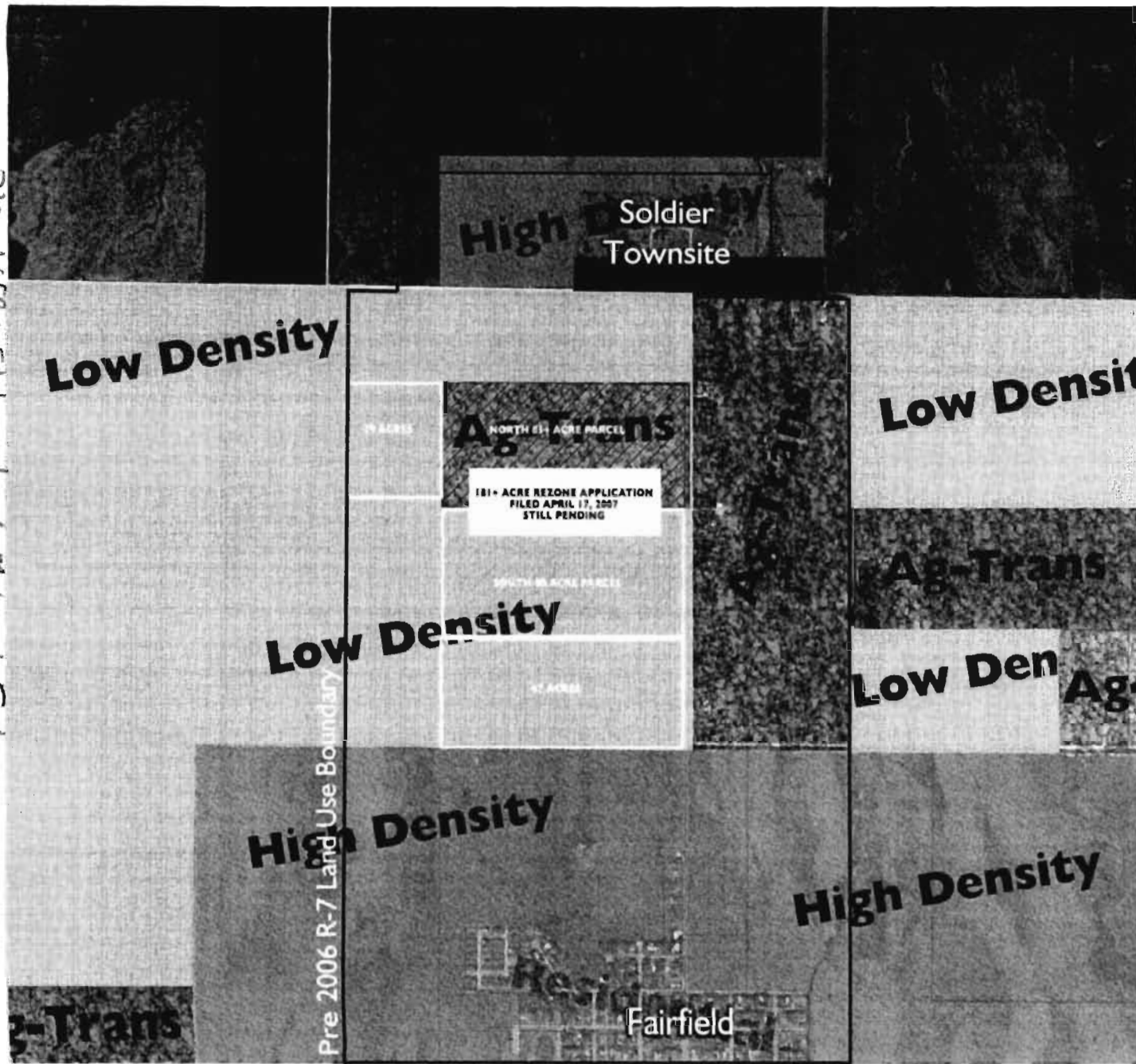
will

1. The authors are grateful to the National Science Foundation (NSF) for the support of this work under Grant Number DMR-0072504.



### Plaintiff's Statement of Material Fact

Plaintiff's Statement of Material Fact



PLAINTIFF'S  
EXHIBIT  
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**Post 2006 Zoning Map**  
LEGEND

- Agricultural - AG - ALL PROPERTY UNLESS MARKED
- Agricultural Transition - AT
- High Density Residential - Four/Acres
- Low Density Residential - One/Acre
- Rural Residential - One / 2.5 Acres
- Ag 5 - One/5 Acres
- Ag 10 - One/10 Acres
- Ag 20 - One/20 Acres
- Industrial
- Commercial

PROPERTY ZONING SHEET FOR  
**Soldier Star Developers, L.L.C.**  
OF GOVERNMENT LOT 4, AND THE S1/2 OF THE NE1/4  
SECTION 4, T12N, R14E, B1E, ARKAS PARCELS, DUMAS, LOUISIANA

DATE: 11/11/2007 BY: [Signature]

SCALE: 1" = 100'

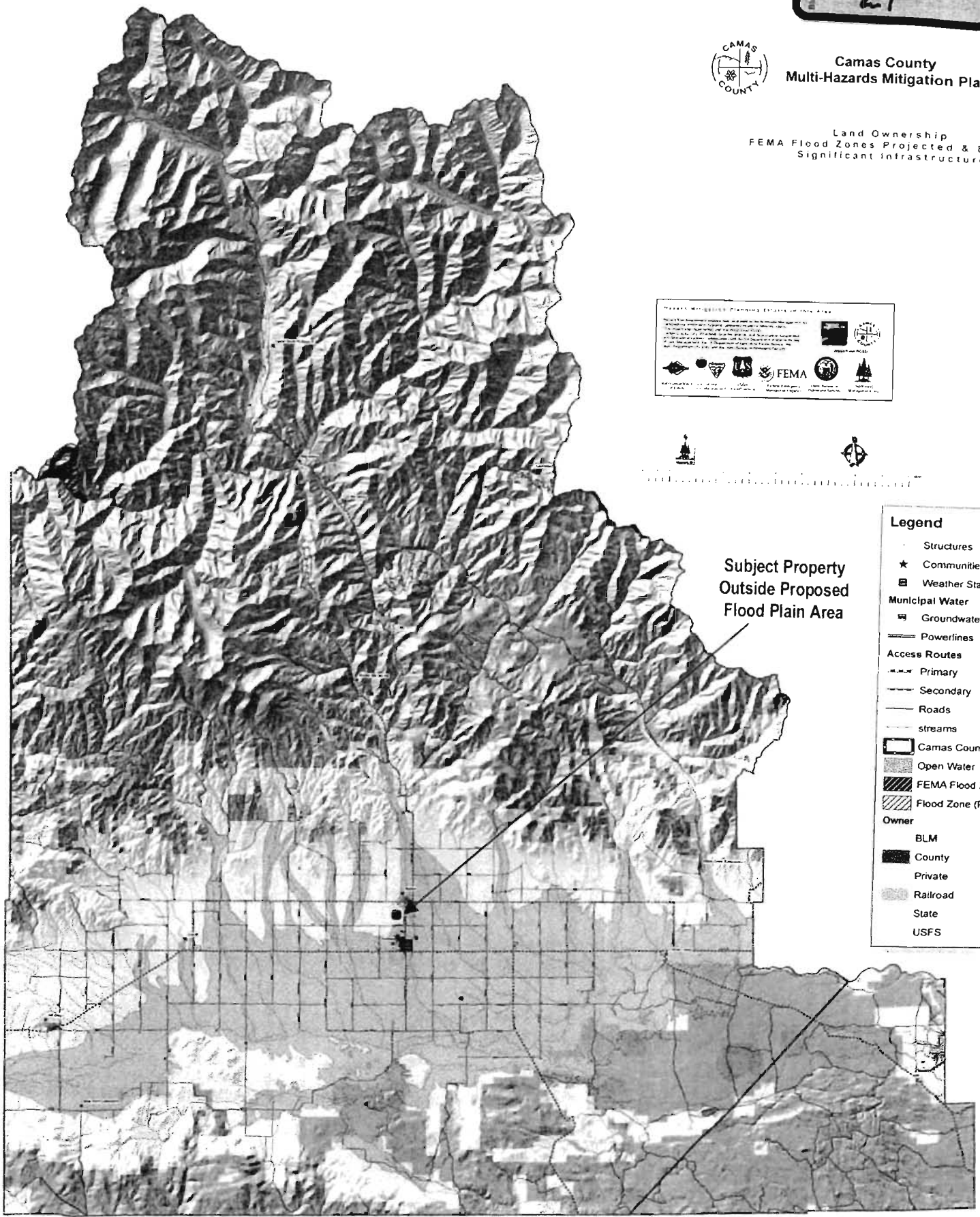
DATE: 11/11/2007 BY: [Signature]



**Camas County  
 Multi-Hazards Mitigation Plan**



Land Ownership  
 FEMA Flood Zones Projected & Existing  
 Significant Infrastructure



**Camas County Multi-Hazards Mitigation Planning**

This document is a planning tool for the Camas County Multi-Hazards Mitigation Plan. It is not a final plan and should not be used for decision-making. It is a planning tool only. It is not a final plan and should not be used for decision-making. It is a planning tool only.





Camas County  
 FEMA  
 USFS  
 State  
 Private  
 County  
 BLM

- Legend**
- Structures
  - ★ Communities
  - Weather Stations
  - Municipal Water
  - Groundwater
  - Powerlines
  - Access Routes
    - Primary
    - Secondary
  - Roads
  - streams
  - Camas County
  - Open Water
  - FEMA Flood Zone
  - Flood Zone (Projected)
  - Owner**
    - BLM
    - County
    - Private
    - Railroad
    - State
    - USFS

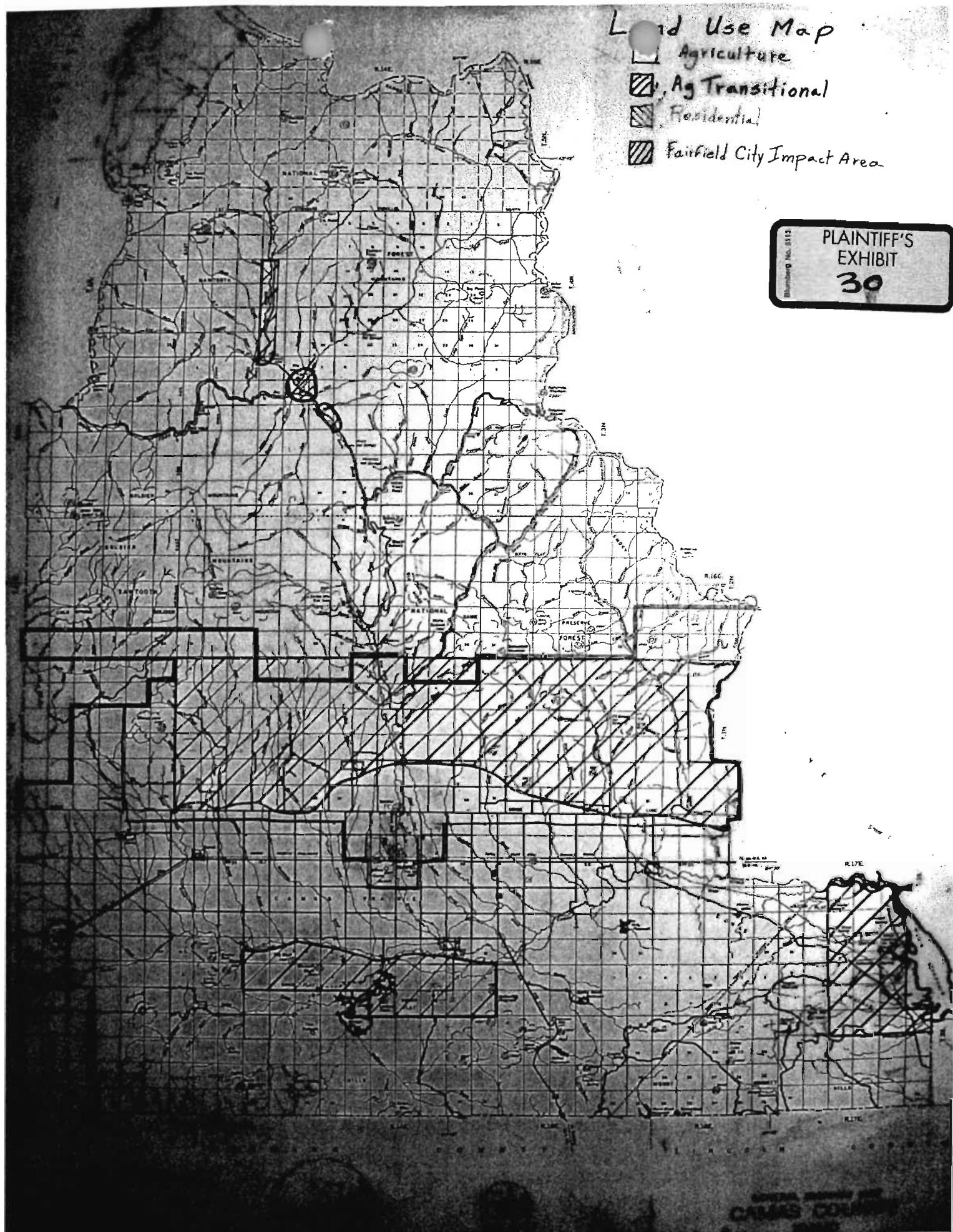
**Subject Property  
 Outside Proposed  
 Flood Plain Area**

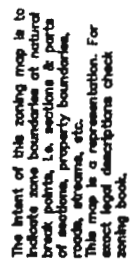


# Land Use Map

-  Agriculture
-  Ag Transitional
-  Residential
-  Fairfield City Impact Area

Blumberg No. 5113  
PLAINTIFF'S  
EXHIBIT  
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**STONING MAY BE USED**



**CALCAS COUNTY ZONING AND LAND USE MAPS - DRAFT 1 - 3-14-08**